

**LOCAL BANKRUPTCY RULES**  
**FOR THE UNITED STATES BANKRUPTCY COURT**  
**FOR THE DISTRICT OF MONTANA**

Honorable Ralph B. Kirscher  
Chief United States Bankruptcy Judge

Honorable John L. Peterson  
United States Bankruptcy Judge (Recall Status)

Effective December 1, 2001

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\*\*\*\*\*

**LOCAL RULES COMMITTEE**

Neal G. Jensen, Chair  
Robert G. Drummond  
John H. Grant  
Kelli Harrington  
Terrence M. Healow  
Doug James  
Gregory A Luinstra  
Bernard F. McCarthy  
Daniel P. McKay  
James A. Patten  
Ruth Reineking

\*\*\*\*\*

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA

In re

2001 AMENDMENTS TO THE LOCAL RULES FOR THE  
UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MONTANA.

---

O R D E R

---

IT IS ORDERED the proposed amendments to the Local Rules for the United States Bankruptcy Court for the District of Montana to be effective December 1, 2001, are hereby approved as of said effective date.

DATED: November 20, 2001

/s/Donald W. Molloy  
HON. DONALD W. MOLLOY, Chief District Judge

/s/Richard Cebull  
HON. RICHARD CEBULL, District Judge

/s/Sam E. Haddon  
HON. SAM E. HADDON, District Judge

**LOCAL BANKRUPTCY RULES  
FOR THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MONTANA**

**PREFACE**

From and after the effective date specified in the preceding Order of the United States District Court, these Local Bankruptcy Rules shall govern practice and procedure in the United States District Court for the District of Montana. United States District Court Standing Order No. 12 (Revised) makes a general reference of all bankruptcy cases and proceedings to the Bankruptcy Judges of the District of Montana, provides for jury trials in the Bankruptcy Court, and authorizes appeals to be heard and decided by the Ninth Circuit Bankruptcy Appellate Panel. Such Standing Order is reproduced below in its entirety:

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA**

-----  
**STANDING ORDER NO. 12 (REVISED)**

**CONTINUING ORDER REFERRING BANKRUPTCY CASES AND  
PROCEEDINGS TO BANKRUPTCY JUDGES, AUTHORIZING JURY  
TRIALS, AND AUTHORIZING BANKRUPTCY APPEALS  
TO BE DECIDED BY THE NINTH CIRCUIT  
BANKRUPTCY APPELLATE PANEL SERVICE**

-----  
IT IS ORDERED that Standing Order No. 12 (revised), filed on May 24, 1985, is revised and amended as follows:

**PART I: REFERRAL OF BANKRUPTCY CASES AND PROCEEDINGS**

**1.01 CASES AND PROCEEDINGS UNDER TITLE 11, UNITED STATES CODE**

This Court hereby refers to the bankruptcy judges of this district all cases under Title 11, and all proceedings arising under Title 11 or arising in or related to cases under Title 11.

**1.02 CASES AND PROCEEDINGS UNDER THE BANKRUPTCY ACT OF 1898**

The bankruptcy judges of this district shall hear and determine cases and proceedings arising under the Bankruptcy Act of 1898, as amended, pursuant to § 403(a) of the Bankruptcy Reform Act of 1978.

**1.03 JURY TRIALS**

If the right to a jury trial applies in a proceeding that may be heard under 28 U.S.C. § 157 by a Bankruptcy Judge, the Bankruptcy Judge(s) of this district may conduct the jury trial with the express consent of all the parties.

## **PART II: BANKRUPTCY APPEALS**

### **2.01 BANKRUPTCY APPELLATE PANEL**

(a) Pursuant to 28 U.S.C. § 158(b)(2), this Court hereby authorizes the Bankruptcy Appellate Panel Service to hear and determine appeals from judgments, orders, and decrees entered by bankruptcy judges from this district, in accordance with the "Order Continuing Bankruptcy Appellate Panels of the Ninth Circuit" dated April 28, 1995, attached hereto.

### **2.02 RULES GOVERNING BANKRUPTCY APPEALS**

(a) Practice in such bankruptcy appeals as may come before this District Court shall be governed by Part VIII of the Federal Rules of Bankruptcy Procedure, except as provided in this Order or in rules subsequently adopted by this District Court.

(b) Notwithstanding subparagraph (a), the time for filing appellant's, appellee's, and reply briefs for consideration by the District Court shall be 40 days, 30 days, and 14 days, respectively, in lieu of the time limits specified in Rule 8009(a) of the Federal Rules of Bankruptcy Procedure, provided however, that the District Court may shorten these time limits in appropriate cases.

(c) All briefs filed on appeal in District Court shall not exceed twenty (20) pages in length, exclusive of exhibits, table of contents, and cover, without prior Court approval. Briefs exceeding twenty (20) pages shall have a table of contents and a table of cases with page references.

## **PART III: EFFECTIVE DATE**

This Order shall become effective immediately and supersedes all previous orders of this Court regarding bankruptcy cases, proceedings, and appeals, provided however, that all prior actions of the Bankruptcy Appellate Panel Service not inconsistent herewith are not affected by this Order.

IT IS SO ORDERED.

DATED: September 26, 1995.

Chief Judge Paul G. Hatfield  
U.S. District Judge Charles C. Lovell  
U.S. District Judge Jack D. Shanstrom

**LOCAL BANKRUPTCY RULES**  
**FOR THE UNITED STATES BANKRUPTCY COURT**  
**FOR THE DISTRICT OF MONTANA**

**RULE 1001-1. Scope, Applicability and Promulgation of Local Rules; Short Title.**

(a) **Scope.** The Local Bankruptcy Rules govern practice and procedure in the United States Bankruptcy Court for the District of Montana. A Judge, *sua sponte*, or on the motion of any party, may for cause shown dispense with any of these Local Rules in a particular case or proceeding as may be necessary to meet emergencies or to avoid injustice. The Local Rules shall be cited as “Mont. LBR \_\_\_\_\_”. The term “Judge” as used in these Local Rules includes a United States Bankruptcy Judge, a United States District Judge, or any other judicial officer to which a bankruptcy case or proceeding has been referred. The term “Clerk” as used in these Local Rules refers to the United States Bankruptcy Clerk for the District of Montana. Local Bankruptcy Forms as contained in the Appendix to these Local Rules shall be cited as “Mont. LBF \_\_\_\_\_”.

(b) **Applicability.** Unless otherwise indicated, each of these Local Rules applies to cases commenced under Chapters 7, 9, 11, 12 and 13 of the U. S. Bankruptcy Code and to all Adversary Proceedings.

(c) **Promulgation.** Promulgation of these Local Rules are made by the Bankruptcy Judge in accord with Rule 9029 of the Federal Rules of Bankruptcy Procedure, and Rule 83 of the Federal Rules of Civil Procedure.

(d) **Numbering.** Each Local Rule is numbered by reference to the corresponding Federal Rule of Bankruptcy Procedure (F.R.B.P.). Except as otherwise provided, the authority for each Local Rule is the corresponding F.R.B.P.

(e) **Electronic Filing.** The Court may establish general administrative rules and/or procedures for the filing of petitions and schedules, the filing and service of pleadings and other documents, and the giving and receiving of notice, by electronic means. To the extent they are inconsistent with these Local Rules, such rules and/or procedures shall control.

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Related Authority:

28 U.S.C. §§ 151, 154, 2071, 2072 and 2075  
Federal Rules of Bankruptcy Procedure 1001, 5005, 9009 and 9029  
Federal Rule of Civil Procedure 83

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**RULE 1002-1. Petition - General.**

(a) **Petitions.** All petitions shall conform to Official Form 1.

(b) **Filing.** A petition commencing a case under the U. S. Bankruptcy Code may be filed in the office of the Clerk or by electronic means established to implement the Case Management/Electronic Case Filing system (“CM/ECF”), in accordance with the requirements set forth in these rules and in any general administrative rules issued by the Court.

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Related Authority:

Federal Rules of Bankruptcy Procedure 1002 and 5005  
Bankruptcy Official Forms 1, 6 and 7

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**RULE 1005-2. Petition - Caption.**

(a) **Debtor's Current Name.** The title of the case shall include the debtor's full and correct name.

(1) **Corporations and Partnerships.** If the debtor is a partnership or a corporation, the title of the case shall so specify as follows:

ABC, Inc., a Corporation; or XYZ, a General (or Limited) Partnership.

(2) **Joint Petitions.** Pursuant to 11 U.S.C. § 302, only a husband and wife are permitted to file a joint petition. The title of the case shall identify them as follows:

John Doe and Jane Doe.

(b) **Other Names Used by the Debtor.** Any other names used by the debtor in the last six (6) years shall be included in the petition.

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Related Authority:

Federal Rules of Bankruptcy Procedure 1004, 1005 and 9004

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**RULE 1006-1. Fees; Installment Payments.**

(a) **General Requirement.** Every petition shall be accompanied by the filing fee required by statute or by the Judicial Conference of the United States.

(b) **Installment Payments.**

(1) **Application.** Any individual debtor desiring to pay the filing fee in installments shall use the Official Form 3 .

(2) **Schedule of Payments.** The first installment shall accompany the petition and not be less than \$50.00 and shall include any required administrative fee. The number of installments proposed in the application shall not exceed four (4), and the final installment shall be payable within 120 days after the date the petition is filed.

(3) **Failure to Pay Installment.**

(A) **Notice of Nonpayment.** If an individual debtor fails to pay an installment as approved in the application, the Clerk shall provide written notice to the debtor, debtor's attorney, if any, and the trustee that such installment must be paid within ten (10) days of the notice.

(B) **Dismissal of Case.** If an individual debtor fails to pay an installment after notice and within the required time period, the Court shall issue an order of dismissal without any further notice or hearing. If the individual debtor timely pays the first delinquent installment within the ten (10) day period and then fails to pay any subsequent installment by the required date, the Court shall issue an order of dismissal, without any additional notice from the Clerk

(C) **Notice of Possible Dismissal.** At the time the Clerk transmits a copy of the Order approving the application to pay in installments, the Clerk shall include with such transmission a notice of the dismissal provisions contained in this Local Rule.

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Related Authority:

Federal Rules of Bankruptcy Procedure 1006  
Bankruptcy Official Form 3

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**RULE 1007-1. Schedules and Statement of Financial Affairs.**

(a) **No Blank Items.** Each item in the schedules and statement of affairs not otherwise filled out, shall be completed by the entry of “none” or “not applicable,” as appropriate.

(b) **Summary of Assets and Liabilities.** In all Chapter 7, 11, 12 and 13 cases, the debtor shall file a document listing a summary of all assets and liabilities, itemizing all priority, secured, and unsecured claims, and itemizing all real and personal property, and any exemptions claimed; together with total amounts for all assets, all liabilities, and all exemptions claimed. Such summary must be amended in the event of any amendments to the debtor's schedules or statements.

(c) **Number of Copies.** An original and two (2) copies of each petition, schedule of assets and liabilities, and statement of financial affairs, as appropriate, shall be filed with the Clerk by an entity seeking relief under Chapters 7, 11, 12 or 13. The number of copies required by the Clerk’s Office may be affected by the CM/ECF system and will be specified in the general administrative rules issued by the Court.

(d) **Corporate or Limited Liability Company Petition.** A petition filed by a corporation or a limited liability company under Chapters 7, 11 or 12 shall include a resolution adopted by the directors or members or managers and, if required by the corporate by-laws or the laws of the state of incorporation, a resolution adopted by shareholders authorizing the relief sought (or a certification by the person signing the petition or the debtor's attorney that a shareholder's resolution is not required).

(e) **Dismissal of Case.** If the schedules and statement of financial affairs are not filed with the petition, they shall be filed within fifteen (15) days after filing the petition or within the time permitted by Court Order granting a motion for extension of time filed prior to the expiration of the fifteen (15) day period. If the schedules and statement of financial affairs are not timely filed, the Court shall dismiss the case, with notification in the Order that the debtor may request a hearing to vacate such Order upon a showing of good cause within five (5) days of the date of the Order.

(f) **Privacy.** The Court will implement all requirements concerning privacy and security that may be included in the U.S. Bankruptcy Code, promulgated in the Federal Rules of

Bankruptcy Procedure, and adopted in the Official Forms, and adopted by the Judicial Conference of the United States, and involving personal identifiers pertinent in bankruptcy, namely: Social Security numbers; financial account numbers; names of children and dates of birth, if required. Such implementation shall be by amendment to the Local Rules or by general order.

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Related Authority

U.S. Bankruptcy Code § 102  
Federal Rule of Bankruptcy Procedure 1007 and 1017

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**RULE 1007-2. Master Mailing List.**

**(a) Filing Requirements.**

(1) **Voluntary Case.** A “master mailing list” conforming to the sample set forth in Mont. LBF 3 shall be filed with the petition and include the name and address of the debtor, and any debtor's attorney and, in the same order as set forth in the debtor's schedules, the name and mailing address of every creditor, each general and limited partner for a partnership debtor, the most recent officers and directors for a corporate debtor, all equity security holders, the members or managers of a limited liability company and the U. S. Trustee. No duplication of names or addresses shall appear on the master mailing list. The address of the U. S. Trustee is:

The United States Trustee  
301 Central Avenue, Suite 204  
P.O. Box 3509  
Great Falls, Montana 59403.

(2) **Involuntary Case.** With every involuntary petition there shall be filed a master mailing list including the name and address of each petitioner, the petitioner's attorney, the debtor, any debtor's attorney, all last known general partners if the debtor is a partnership, all last known officers if the debtor is a corporation, or the last known members and managers if the debtor is a limited liability company and the U. S. Trustee.

(3) **Duty to Supplement.** A supplemental mailing list setting forth newly added creditors or additional parties in interest and all previously listed creditors or parties in interest shall be filed with any schedules or amended schedules, that will replace any previously filed mailing list. Debtor's failure to file a replacement mailing list with all

creditors and parties in interest including any added persons, and to certify that a Notice of Commencement of Case, if previously entered by the Clerk, has been mailed to all added parties, after notice from the Court, shall be grounds for the Court to dismiss debtor's petition without further notice or hearing. *See* Mont. LBR 1009-4.

(b) **Chapter 9 and 11 Cases.** The debtor shall file a mailing list with the list of the debtor's twenty (20) largest unsecured creditors as required by F.R.B.P. 1007(d), clearly marked "20 Largest Unsecured Creditors," which shall include the name, address and claim of the creditors that hold the largest unsecured claims, excluding insiders, as prescribed by the appropriate Official Form, together with a contact person for each creditor on such list.

(c) **Accuracy and Completeness.** The debtor is responsible for the accuracy and completeness of the master mailing list. When serving notices, the Clerk and any party in interest may rely exclusively on the master mailing list. It shall be the debtor's responsibility to amend the matrix whenever it appears that a creditor or other party in interest was omitted.

(d) **Printing Requirements.** The names and addresses of creditors and other parties listed in the master mailing list must be typed using one of the following fonts: Courier 10 Pitch; Prestige Elite; or Letter Gothic. Each individual name and address must consist of no more than four (4) lines; and a single space must be inserted between the name and address of each successive party. The printing of the names and addresses must be of letter quality using a typewriter, laser printer, or daisy wheel printer. Dot Matrix printers shall not be allowed as the document cannot be optically scanned. In lieu of a typewritten form, master mailing lists shall be provided to the Clerk's Office on a computer disk in "Ascii" text format if more than 100 creditors are listed.

(e) **Submission of Mailing Lists for Cases Filed Electronically.** For cases filed electronically, both the master mailing list, as well as the Mailing List of the Twenty (20) Largest Unsecured Creditors, must comply with the following guidelines:

(1) each name and corresponding address for either the master mailing list or Mailing List of the Twenty (20) Largest Unsecured Creditors, shall meet the requirements of Mont. LBR 1007-2(a); and

(2) data must be submitted to the CM/ECF system as text file (\*.txt) in Ascii format.

(f) **Dismissal of Case.** If the master mailing list required by F.R.B.P. 1007-2(a) and the Mailing List of the Twenty (20) Largest Unsecured Creditors, if required by F.R.B.P. 1007(d), are not filed with the petition, they shall be filed within forty-eight (48) hours after filing the petition. If the master mailing list, the Mailing List of the Twenty (20) Largest Unsecured Creditors, schedules or statement of financial affairs are not timely filed, the Court shall dismiss the case, with notification in the Order that the debtor may request a hearing concerning such dismissal within five (5) days of the date of the Order.

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Related Authority:

U. S. Bankruptcy Code § 102  
Federal Rule of Bankruptcy Procedure 1007, 1017 and 9004

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**RULE 1009-1. Amendments to Petition, Schedules and Master Mailing List.**

(a) **Amendments Generally.** The original amendment to a voluntary petition, list, schedule or statement shall be filed in accordance with this local rule. The person filing the amendment shall contemporaneously serve the amendment on the U.S. Trustee, the case trustee, if any, and any and all entities affected by the amendment.

(b) **Interlineation.** No amendment by interlineation shall be permitted. The entire page or pages that the amendment affects shall be redrafted with the amendment redlined, underlined, or otherwise highlighted, and in such a manner that the amended page(s) will be complete without referring to the page or pages that have been amended.

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Related Authority:

Federal Rule of Bankruptcy Procedure 1009

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**RULE 1009-2. Case Name and Number on Amendments; Verification.**

The debtor's name and case number shall appear on the first page of any amended petition, schedules, and/or statements. Any such amendment shall be verified in the same manner as the original.

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Related Authority:

Federal Rule of Bankruptcy Procedure 1007, 1008 and 1009

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**RULE 1009-3. Amendment of Petition to Add Party.**

Unless otherwise ordered by the Court, a petition may not be amended to add a spouse as a joint petitioner after the order for relief has been entered.

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Committee Note:

Addition of a party after entry of the order for relief is a substantial change and should generally not be allowed. The appropriate remedy is to file a second petition and file a motion to allow joint administration or consolidation.

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**RULE 1009-4. Addition of Creditors or Parties in Interest. (See Mont. LBF 4 and 4-A)**

(a) **Duty to Amend Master Mailing List and Summary Sheet.** The amended list shall comply with the requirements of Mont. LBR 1007-2(a)(3).

(b) **Notification.** If the debtor files an amendment adding creditors or parties in interest not previously included in the schedules or included on the mailing list, or if the amendment corrects an address or listed debt, the person filing the amendment shall serve copies of the following on any affected creditor or party in interest and file a certificate of service verifying that such copies have been served:

- (1) the amended list or schedule;
- (2) the “Notice of Chapter [7, 11, 12 or 13] Bankruptcy Case, Meeting of Creditors, and Deadlines”;
- (3) the order granting discharge, if any;
- (4) any other filed document affecting the rights of said creditor or party in interest; and
- (5) any notice or order setting or extending any deadline for filing a claim, or a complaint for determining a discharge or dischargeability.

(c) **Fee for Amending Schedules.** Every amendment that adds creditors, equity security holders or parties in interest to lists, schedules or statements previously filed with the Court, or that corrects the names, addresses or debts of such entities, shall be accompanied by a fee as prescribed by the Judicial Conference of the United States.

**RULE 1015-1. Joint Administration and Consolidation.**

(a) **Joint Administration.** A motion seeking the joint administration of the cases of two or more related debtors shall be made pursuant to F.R.B.P. 1015(b).

(b) **Consolidation.** A motion seeking to consolidate two or more cases shall, if granted,

result in the consolidation of such cases for all purposes unless otherwise ordered by the Court. The debtors' estates shall be deemed consolidated in a case jointly filed by a husband and wife, unless the Court orders otherwise.

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Related Authority:

Federal Rules of Bankruptcy Procedure 1015 and 2009

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**RULE 1017-1. Dismissal or Conversion.**

(a) **Motions to Dismiss or Convert.** Except as provided in Mont. LBR 1017-1(b), a trustee or other party in interest may file a motion to dismiss or to convert a case to a case under another Chapter in accordance with F.R.B.P. 1017, by using Mont. LBF 27 with service of the motion on the debtor, debtor's attorney and the trustee. The motion shall include a legal and factual basis for the motion. If a debtor files a response and requests a hearing within ten (10) days of the date of the motion, then the debtor shall notice the contested matter for hearing pursuant to Mont. LBR 9013-1 and shall provide that the hearing on the motion and response shall be scheduled at least twenty (20) days after the date of the debtor's response and request for hearing. If the debtor fails to file a written response to the motion to dismiss within ten (10) days of the date of the motion to dismiss, the failure to respond shall be deemed an admission that the motion should be sustained by the Court without further notice or hearing.

(b) **Dismissal or Conversion upon Debtor Defaulting under Terms of Confirmed Plan.** If the debtor defaults under the terms of a confirmed plan and the order confirming the plan contains the following provision: "In the event of any default under the plan, the court may dismiss or convert this case to Chapter 7 without further notice or hearing.", the Court may grant a motion for conversion or dismissal without the notice period required in Mont. LBR 1017-1(a) and without further hearing.

(c) **Dismissal of Related Title 11 Proceedings and Matters.** Whenever a case filed under Title 11 is dismissed, any related adversary proceeding, contested matter, or any other pending matter shall likewise be dismissed without prejudice and without further order of the Court, unless the Court orders otherwise. Cases with pending appeals may be dismissed, but the dismissal of the case shall not be deemed to deprive any appellate court of its jurisdiction.

**RULE 1019-1. Conversion from One Chapter to Another.**

(a) **Debtor's Schedules Following Conversion.** Within fifteen (15) days following conversion to another Chapter the debtor shall file revised schedules of assets and liabilities

reflecting any changes in such items since the filing of the original petition.

(b) **Notification.** If the debtor files an amendment adding creditors or parties in interest not previously included in the schedules or included on the mailing list, or if the amendment corrects an address or listed debt, the person filing the amendment shall serve copies of the following on any affected creditor or party in interest in compliance with Mont. LBR 1009-4(b).

**RULE 1074-1. Corporations, Partnerships and Limited Liability Companies Representation.**

Corporations, including corporate creditors, partnerships, and limited liability companies shall be represented in Court proceedings by an attorney, other than at meetings of creditors held pursuant to 11 U.S.C. § 341(a). Such entities are not required to retain attorneys to file proofs of claim or reaffirmation agreements.

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Related Authority:

28 U.S.C. § 1654

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**PART II.**

**RULE 2002-1. Notice to Creditors & Other Parties in Interest.**

(a) **Duty to Provide Notice.** Unless otherwise directed in these rules, or by the Court, notices shall be provided as set forth in Mont. LBR 9013-1 and consistent with F.R.B.P. 2002.

(b) **Chapter 13 Plans.** The Clerk shall give notice of the time fixed for objecting to the proposed plan and any amendment or modification to the plan.

(c) **Mailing List.** When these rules require or permit notice to be given to creditors and other parties in interest by a party other than the Clerk, the Clerk shall provide the party with a mailing list.

(d) **Method of Service.** Notices and documents required to be sent by a party, other than the Clerk, shall be served, at a minimum, by first class mail, postage prepaid, unless the party in interest has consented by notification to the Clerk that such party requests notification by a specified type of electronic transmission pursuant to F.R.B.P. 9036.

**RULE 2002-2. Requests for Special Notice.**

Any creditor or other party in interest may request special notice and the addition of its name to the master mailing list in a bankruptcy case by using Mont. LBF 23, or any similar request form.

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Related Authority:

Federal Rule of Bankruptcy Procedure 9010

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**RULE 2002-3. Notice to United States and Montana State Agencies.**

In addition to notices required by F.R.B.P. 2002(j) and to agencies of the United States and the State of Montana listed in the schedules of creditors or mailing matrix, copies of notices shall be served as appropriate to the following:

(a) In all cases:

The United States Trustee  
301 Central Avenue, Suite 204  
P.O. Box 3509  
Great Falls, MT 59403-3509; and

Montana Department of Revenue  
Office of Legal Affairs  
Mitchell Building  
Helena, MT 59620

(b) In all Chapter 11 cases:

Internal Revenue Service  
Attn: Special Procedures Function  
600 17<sup>th</sup> Street  
Denver, CO 80202-5402

There is no additional requirement to notify the IRS District Director in Ogden, Utah.

(c) In all Chapter 11 cases, and in all cases under other Chapters in which the debtor is aware of any claims by Montana state agencies other than the Montana Department of Revenue:

(--insert agency name--)  
c/o Bankruptcy Section  
Montana Department of Justice  
215 North Sanders  
P.O. Box 201401  
Helena, MT 59620-1401

(d) Notice of all hearings on original or modified disclosure statements or on confirmation of original or modified plans in Chapter 11 cases where the debtor is a publicly held corporation:

Securities and Exchange Commission  
Pacific Region Office  
5670 Wilshire Boulevard, 11th Floor  
Los Angeles, California 90036-3648.

(e) If the debtor is a commodity broker:

Commodity Futures Trading Commission  
Washington, D.C. 20581.

(f) If the United States has a stock interest:

Secretary of Treasury  
Washington, D.C. 20220.

**RULE 2002-4. Notice of Application for Attorney's Fees.**

If a request for compensation or reimbursement of expenses exceeds \$1,000.00, except as otherwise provided in Mont. LBR 2016-1, the proponent of such request shall mail a notice, consistent with Mont. LBF 30 to all parties in interest listed on the master mailing list disclosing that the proponent has filed such a request with the court. The notice shall state that the compensation and expenses are in amounts exceeding \$1,000.00, as specifically itemized in the notice, have been requested from the estate, subject to Court approval, and that if no objection is filed and no hearing is requested within twenty days of the date of the notice, then the court will deem the request submitted and take it under advisement, wherein a decision will be rendered without further notice or hearing. If an objection is filed or if a hearing is requested, then notice of a hearing, with at least twenty days notice, will be provided to all parties on the master mailing list.

**RULE 2003-1. Scheduling and Attendance at Creditors' Meetings.**

The U. S. Trustee shall schedule creditor meetings pursuant to F.R.B.P. 2003.

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Related Authority:

11 U.S.C. § 341  
Federal Rule of Bankruptcy Procedure 2003

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**RULE 2003-2. Time Limitations of Creditors' Meetings.**

The U. S. Trustee, or case trustee, at a meeting of creditors held pursuant to 11 U.S.C. § 341(a) shall have full authority to allocate available time to each meeting scheduled during each time period, place limitations on the time allowed creditors to examine a debtor in order to conclude or adjourn all meetings within the time period scheduled, and to call the docket in such order as appears necessary to facilitate the orderly conduct of meetings.

**RULE 2003-3. Attendance and Cooperation at Creditors' Meetings.**

A debtor and debtor's attorneys shall attend the meeting of creditors held pursuant to 11 U.S.C. § 341(a), though a debtor's attorney may arrange for other counsel to attend in his or her absence. If debtor appears and debtor's attorney fails to appear, the trustee may, subject to directives from the U.S. Trustee, proceed with the scheduled meeting of creditors. In cases of joint petitions, both debtors must appear. If requested by the trustee or the U.S. Trustee, at or prior to a meeting, it shall be the duty of the debtor to make available to the trustee all books, records and documents which are relevant to the examination of the debtor, including but not limited to all vehicle titles, lien and perfection documents, and copies of state and federal income tax returns for the four years preceding the filing of the debtor's petition. Failure to provide all relevant books, records, documents and other materials requested by the trustee or the U.S. Trustee, or to cooperate with any inquiry or request made of the debtor, may be grounds for dismissal or denial of discharge by the Court, upon an appropriate pleading being filed with the Court.

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Related Authority:

11 U.S.C. § 343

**RULE 2003-4. Continuance of Creditors' Meetings.**

An application seeking the continuance of a creditors' meeting set pursuant to 11 U.S.C. § 341(a) shall be made to the U. S. Trustee. The U. S. Trustee shall grant or deny such application as it deems appropriate. Grounds for continuance shall be based solely on extraordinary circumstances beyond the debtor's control, which shall not include unavailability of debtor's counsel. Written application for a continuance shall be in conformity with Mont. LBF 5, and shall be made at least ten (10) days prior to the scheduled meeting. An original of the Disposition of Application for Continuance form (Mont. LBF 5-A) shall accompany the application made to the U. S. Trustee. Once executed by the U. S. Trustee, the U. S. Trustee shall file the Disposition with the Clerk and mail a copy to the debtor's attorney or to the debtor if not represented by an attorney, and to the case trustee, if applicable. If the application is granted, the debtor or debtor's attorney must notify all creditors and parties in interest of the continuance, including the case trustee, if applicable, at least seven (7) days prior to the original date set for the meeting. Such notice shall be in conformity with Mont. LBF 6. Proof of service of the mailing of such notice of continuance shall be filed with the Clerk and served on the U. S. Trustee.

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Committee Note:

The U.S. Trustee's calendar of dates for creditor meetings held pursuant to 11 U.S.C. § 341(a) is set generally three months in advance. The U.S. Trustee has the authority to grant or deny continuances of § 341(a) meetings.

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**RULE 2003-6. Oral Notice of Continuance of Creditors' Meetings.**

At the sole discretion of the case trustee, oral notice of a continuance or adjournment may be given at the time of the creditors' meeting held pursuant to 11 U.S.C. § 341(a). Written notice of the oral continuance of the creditors' meeting shall be filed with the Clerk by the trustee and served on the U. S. Trustee, the debtor(s), debtor's attorney and all creditors in attendance at the time of the originally scheduled meeting of creditors.

**RULE 2003-7. Failure to Appear at Creditors' Meetings.**

Where the debtor fails to appear at the meeting of creditors scheduled pursuant to 11 U.S.C.

§ 341(a), the case may be dismissed by the Court upon notification by the trustee or the U. S. Trustee of debtor's failure to appear (See Mont. LBF 7), unless the debtor or the debtor's attorney filed an application for continuance not later than ten (10) days prior to the scheduled creditors' meeting, as required under Mont. LBR 2003-4 above, and such application was granted by the U. S. Trustee. Failure to timely file an application for continuance may result in the case being dismissed, unless the trustee or another party in interest requests that the case remain open. If one debtor in a joint case fails to appear, the Court may bifurcate the joint case and dismiss the absent debtor's case.

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Committee Note:

The panel trustee may request that the case remain open and is further allowed to oppose the entry of the debtor's discharge based on failure to appear. 11 U.S.C. §§ 704 and 727. Note also that dismissal on this ground falls within the scope of 11 U.S.C. § 109(g)(1) regarding filing of a subsequent petition for relief.

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**RULE 2004-1. Rule 2004 Examinations.**

Any party in interest moving the Court for an order allowing the examination of an entity pursuant to F.R.B.P. 2004 shall make such motion in compliance with Mont. LBF 15 and shall provide an original form of order in compliance with Mont. LBF 16.

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Related Authority:

11 U.S.C. §§ 343 and 344  
Federal Rules of Bankruptcy Procedure 2005

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**RULE 2014-1. Applications for Employment of Professionals.**

All applications to approve the employment of professionals by the trustee, debtor-in-possession or committee, filed pursuant to F.R.B.P. 2014, in cases under Chapters 7, 11, 12 or 13, shall be in conformity with Mont. LBF 1. Absent compelling circumstances, no compensation may be earned by professionals retained by the trustee or debtor-in-possession until after the filing of the application.

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Related Authority:

Committee Note:

No requirement exists under the Code or Federal Rules of Bankruptcy Procedure for a debtor's attorney to seek approval of employment in a Chapter 7 or 13 case. However, if such attorney seeks compensation as an administrative expense under 11 U.S.C. § 330(a), Mont. LBR 2016-1 applies. Section 329 of the Bankruptcy Code applies to an attorney representing a debtor under any Chapter of the Code, regardless of whether the attorney applies for compensation under F.R.B.P. 2016.

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**RULE 2015-1. Trustee's Administrative Expenses.**

A Chapter 7 trustee may expend up to \$500.00 for administrative expenses to preserve or protect estate assets without prior order of the Court, and shall account for such expenditures in the trustee's Final Report.

**RULE 2016-1. Applications for Compensation of Professionals.**

(a) **Applications.** All applications for fees and costs of professionals filed pursuant to F.R.B.P. 2016 in cases under Chapters 7, 11, 12, or 13 shall be in conformity with Mont. LBR 17. No compensation or reimbursement of expenses shall be paid a professional, including from a retainer, until allowed by order of the Court under this Rule.

The U. S. Trustee has established "Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330," (Appendix A to 28 C.F.R. §58) which are contained in the Appendix to these Local Rules. The U. S. Trustee has determined that compliance with the project billing format will not be required for applications seeking professional fees in an amount less than ten thousand dollars (\$10,000).

Professional fees shall be documented through contemporaneous billing records. Each task shall be itemized separately, identifying the task performed, the amount of time involved, and the fee for each time entry. The Court may deny compensation for tasks which are lumped together in one entry if the cumulative time for those tasks exceeds one hour. Lumping shall be permitted for cumulative tasks which do not exceed one hour. Professionals shall be allowed compensation at the professional's usual hourly rate for reasonable and necessary travel time.

(b) **Presumed Reasonable Fees.** In a Chapter 13 case, if the debtor's plan is confirmed, and

if professional fees for the debtor's attorney do not exceed \$1,750.00, no application for such fees will be required and no order authorizing such fees shall be necessary. In Chapter 11 and 12 cases, if the debtor's plan is confirmed, and if professional fees for the debtor's attorney do not exceed \$4,500.00, no application for such fees will be required and no order authorizing such fees shall be necessary. A rebuttable presumption shall exist that fees referred to in this subpart are reasonable and necessary, and no evidence will be required to establish the same as an administrative expense unless the U. S. Trustee or another party in interest files a timely objection to such fees, or the Court, *sua sponte*, sets a hearing on such fees. If attorney fees exceed the allowed amounts noted above, the professional must file an application pursuant to this rule, and submit evidence that the entire amount of fees requested are reasonable and necessary for the proper representation of the debtor.

(c) **Allowed Expenses.** In addition to a professional's fees and compensation, the following expenses shall be allowed at the actual cost to the professional: postage, long-distance telephone, facsimile charges, computerized legal research, travel-related expenses, and other expenses associated with the professional's representation of the party, provided they are shown to be reasonable and necessary. Photocopy costs shall be presumed reasonable and shall be allowed at the rate of \$.10 per page, unless the professional proves a greater actual cost; provided they are shown to be necessary. Mileage shall be presumed reasonable and shall be allowed at the federal rate provided by the regulations of the Internal Revenue Code for travel by private automobile, unless the professional proves a greater actual cost; provided such mileage is shown to be necessary.

(d) **Fees of Oversecured Creditors.** If oversecured creditors wish to recover reasonable fees, costs, or charges provided for under the agreement under which the claim arose as a portion of the creditor's allowed secured claim pursuant to 11 U.S.C. § 506(b), the professionals retained by a creditor shown to be oversecured pursuant to 11 U.S.C. § 506(b) must file a fee application in accordance with the standards set forth in 11 U.S.C. § 330 and F.R.B.P. 2016(a). Reasonable fees and expenses of such professionals may be allowed by the Court as a portion of the allowed secured claim.

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Related Authority:

11 U.S.C. §§ 330, 506(b)

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Committee Note:

The local rule allowing fees and expenses to an oversecured creditor only applies if such creditor seeks reasonable fees and expenses as a portion of the creditors's allowed secured claim. The Court has no interest in reviewing the fee arrangement or the fees and expenses incurred between the creditor and the professional if the creditor is paying such fees and expenses and is not seeking

such fees and expenses as a portion of the creditor's allowed secured claim.

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**RULE 2090-1. Admission to Practice Before the Bankruptcy Court.**

(a) **Admission of Attorneys.** Admission to the Bar of this Court is limited to attorneys of good moral character who are members in good standing of the State Bar of Montana. Except as provided herein, the Local Rules of Procedure of the United States District Court for the District of Montana, as amended, shall govern the admission of attorneys to practice before the U. S. Bankruptcy Court for the District of Montana.

(b) **Attorneys for the United States.** An attorney who is not eligible for admission under Mont. LBR 2090-1(a) but who is a member in good standing of and eligible to practice before the Bar or any United States Court or of the highest court of any state or of any territory or insular possession of the United States, who is of good moral character, may practice in this Court in any matter in which that attorney is employed or retained by the United States or its agencies and is representing the United States or any of its officers. Attorneys permitted to practice in this Court are subject to the jurisdiction of the Court with respect to their conduct to the same extent members of the Bar of this Court.

(c) **Admission by *pro hac vice*.** An attorney not eligible for admission under Mont. LBR 2090-1(a) but who is a member in good standing of and eligible to practice before the Bar of any United States Court or of the highest court of any state or of any territory or insular possession of the United States, who is of good character, and who has been retained to appear in this Court, may, upon written application to and in the discretion of the Court, be permitted to appear and participate in a particular case.

(d) **Application.** The *pro hac vice* application shall be presented to the Court and shall state under penalty of perjury: (1) the attorney's residence and office addresses, including an office telephone number, facsimile number, and an e-mail address, if available; (2) by what court(s) the attorney has been admitted to practice, the date(s) of admission and the date(s) of termination; (3) that the attorney is in good standing and eligible to practice in these courts; (4) whether the attorney has ever been held in contempt, disciplined or sanctioned by any state or federal court and the name of the court issuing such order and the date of the order, together with a copy of the order; (5) whether the attorney has previously requested a *pro hac vice* application from this Court and the case number within which the application was requested. The attorney shall further designate in the application the name and address of the local attorney who must be a member of the Bar of this Court, with whom the Court and opposing attorney may readily communicate regarding the conduct and the status of the case and upon who papers shall be served.

(e) **Local Attorney.** The requirement to associate a local attorney admitted to practice

before the U. S. Bankruptcy Court for the District of Montana may, on motion, be waived by the Court on a case-by-case basis. If such association is not waived, the local attorney shall be served with copies of all pleadings, shall attend all hearings or trials, shall be continually informed by the attorney admitted by *pro hac vice* of the current status of all negotiations and matters occurring in the case or proceeding and shall have the local attorney's name, address, and telephone number on all pleadings.

(f) **Fee.** The fee established for *pro hac vice* admission by the U. S. District Court for the District of Montana shall accompany the application, shall be payable to the U. S. District Court, and shall be nonrefundable.

(g) **Revocation.** The Court may revoke *pro hac vice* admission for cause at any time without a hearing.

#### **RULE 2090-2. Notice of Change of Status.**

An attorney who is a member of the Bar of this Court or who has been permitted to practice in this Court under Mont. LBR 2090-1 shall promptly notify the Court of any change in the attorney's status in another jurisdiction which would make the attorney ineligible for membership in the Bar of this Court or ineligible to practice in this Court.

#### **RULE 2090-3. Standards of Professional Conduct.**

The standards of professional conduct for attorneys practicing in this Court shall include the American Bar Association's Model Rules of Professional Conduct and the Montana Rules of Professional Conduct.

#### **RULE 2090-4. Attorney Discipline, Suspension and Disbarment.**

This Court shall enforce the disciplinary rules set forth in the Local Rules of Procedure of the United States District Court for the District of Montana, as amended, when circumstances warrant discipline in this Court. The reference to "Chief Judge" in the Local Rules of Procedure of the United States District Court for the District of Montana, as amended, and as incorporated herein shall mean the Chief Bankruptcy Judge or other bankruptcy judge designated by the Chief Bankruptcy Judge.

#### **RULE 2090-5. Attorney Withdrawal.**

(a) **Withdrawal or Substitution of Attorney for a Debtor.** Except as provided herein for a substituting attorney, no attorney for a debtor may withdraw from any case or proceeding,

without a hearing after:

- (1) notice is served on both the attorney's client(s) and on any opposing attorney, or
- (2) the consent to withdrawal is signed by the attorney and the client(s) and filed with the court, wherein the debtor, if an individual, specifies that the debtor at the specified address and phone number(s) will appear on the debtor's own behalf, or the debtor, if a legal entity, specifies the name, address, phone number and email address of the substituting attorney.

If the consent to withdrawal also identifies the name, address, phone number and email address of the substituting attorney, and is signed by the new attorney, no hearing is necessary and approval by the Court will be routinely granted. Attorneys commencing employment in the case as substitute attorneys shall file a statement pursuant to F.R.B.P. 2016(b) and otherwise fully comply with Mont. LBR 2016-1 and these rules.

(b) **Withdrawal or Substitution of Other Attorneys.** Notice of withdrawal or substitution of attorneys other than debtor's attorney shall be deemed effective upon filing with the Clerk and shall be served upon all parties to the proceeding, the case trustee, and the U.S. Trustee.

#### **RULE 2090-6. Communications with the Court and *Ex Parte* Motions and Applications.**

The Court will not receive and review letters or other communications from attorneys or any parties that do not indicate on their face that copies have been sent to all opposing attorneys or *pro se* litigants. As appropriate, such communications will be transmitted to appropriate parties and attorneys in the case. *Ex parte* motions or applications for orders will not be granted unless it is indicated in the motion or application that the adverse party or attorney has been advised of the request, unless an emergency exists as set forth in an affidavit submitted under penalty of perjury.

#### **RULE 2091. Student Practice Rule.**

(a) **Purpose.** This Court and the Bar are responsible for providing competent legal services. This rule is adopted to assist practicing attorneys in providing legal services and to encourage law schools to provide clinical instruction in diverse trial work.

(b) **Activities.**

(1) An eligible law student may appear in this Court on behalf of any person in any case or adversary proceeding if:

(A) the person on whose behalf the student is appearing has consented in

writing to the appearance and the supervising attorney has approved the appearance in writing; and

(B) the supervising attorney is personally present throughout the case or proceeding and is fully responsible for the manner in which the case or proceeding is conducted.

(2) In each case the written consent and approval referred to above shall be filed in the record of the case or proceeding and shall be brought to the attention of the Court.

(c) **Requirements and Limitations.** To proceed under this Rule, the law student must:

(1) be duly enrolled in a law school approved by the American Bar Association;

(2) have completed legal studies amounting to at least two-thirds of the total credit hours required for graduation;

(3) be certified by the Dean or designate of the student's law school as being of good character and competent legal ability and as being adequately trained to perform as a legal intern;

(4) be introduced to the Court by a member of the Bar of this Court;

(5) neither ask for nor receive any compensation or remuneration of any kind from the person on whose behalf the student renders services; but this shall not prevent an attorney employer, law school, or governmental agency from paying compensation to the eligible law student, nor shall it prevent any of the foregoing from making such charges for its services as it may otherwise properly require; and

(6) certify in writing that the student has read and is familiar with and will abide by the American Bar Association's Model Rules of Professional Conduct and the Montana Rules of Professional Conduct.

(d) **Certification.** The certification of a student by the Law School Dean or designate:

(1) shall be filed with the Clerk of Court, and, unless it is sooner withdrawn, shall remain in effect for twelve (12) months after it is filed, or until the student's admission to any bar, whichever occurs first. Under exceptional circumstances, the Dean or designate may renew the certification for one more twelve (12) month period. Law school graduates are eligible to practice under this Rule until the results of the first bar examination after their certification under this Rule are announced;

(2) may be withdrawn by the Dean or designate at any time by mailing a notice to that effect to the Clerk of Court, who shall forthwith mail copies thereof to the student and the supervising attorney; and

(3) may be terminated by this Court at any time without notice or hearing and without any showing of cause.

(e) **Supervision.** The attorney under whose supervision an eligible law student participates in any of the activities permitted by this Rule shall:

(1) be a member in good standing of the Bar of this Court;

(2) assume personal professional responsibility for the student's guidance in any work undertaken and for supervising the quality of the student's work; and

(3) assist and counsel the law student in the activities mentioned in these Rules and review such activities with such student to ensure the proper practical training of the student and the protection of the client.

(f) **Pro Se Representation.** Nothing contained in this rule shall affect the right of any person who is not admitted to practice law to do anything that person might lawfully do prior to the adoption of this Rule.

### PART III

#### **RULE 3001-1. Proof of Claim for Unsecured Deficiency.**

An undersecured claim which requires an allowance for a deficiency resulting from the enforcement of a security agreement, shall be accompanied by excerpts of the security and perfection documents that are directly germane to establishing the claim, by a summary of the remaining principal balance of the debt, together with the amount of accrued unpaid interest claimed, and the total amount alleged due, as well as a description of the security, and if repossession has occurred, the date of repossession or seizure, whether the sale was public or private, the date of sale, sale price, person to whom sold, the date notice of the sale was given to the debtor and to the trustee, and an itemization of the credit allowed toward the original debt. If repossession has not occurred, the estimated time for the proposed method of liquidating the security must be given. The creditor must file a proof of claim stating the dollar amount of the claim which is unsecured (or a good faith estimate, with details providing the basis for such estimate).

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Related Authority:

**RULE 3001-2. Attachments to Proof of Claim.**

A proof of claim shall include, as an attachment, an itemized summary of the account showing, as of the date of the filing of the petition, the unpaid principal balance, all accrued interest, forced placed insurance, late charges, and other charges. All attachments to any proof of claim shall be on or reduced to 8 1/2" by 11" paper. Entities filing documents or attachments not prepared in electronically produced text shall scan and electronically file only excerpts of the documents that are directly germane to the matter under consideration by the Court. Excerpted material must be clearly and prominently identified as such, and the complete exhibit must be made available forthwith to the attorneys and the Court on request. Entities filing excerpts do so without prejudice to their right to file by electronically scanning additional excerpts or the complete document with the Court. Responding entities may file by electronically scanning additional germane excerpts. Oversized and voluminous attachments will not be filed and will be returned by the Clerk. Filing attachments by other than electronic means is not encouraged, but may be permitted at the discretion of the Court. *See* Mont. LBR 5003-2.

**RULE 3001-3. Interest on Claims.**

If interest upon a debt is to be claimed, the proof of claim must state the dollar amount of interest claimed on the principal, and the rate of interest and per diem from and after the date of filing. Failure to comply with this rule shall be deemed a waiver of any claim for interest upon the debt, without need for formal objection by the trustee or debtor-in-possession, and without need for a hearing.

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Related Authority:

11 U.S.C. § 506(b)

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**RULE 3001-4. Chapter 11, 12 or 13 Plan Superseded by Proof of Claim.**

An allowed proof of claim filed in a Chapter 11, 12 or 13 case shall supersede the amount of such claim set forth in a plan, unless Mont. LBR 3012-1 applies with regard to a dispute as to the amount of the secured claim.

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Related Authority:

11 U.S.C. § 502

Federal Rule of Bankruptcy Procedure 3003(c)(4)

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**RULE 3001-5. Service of Proof of Claim to Debtor’s Attorney and Case Trustee.**

Copies of all proofs of claim shall be mailed to the debtor, or if represented by an attorney, to debtor’s attorney, and to the case trustee at the addresses disclosed on the Notice of Commencement of Bankruptcy Case (§ 341 meeting notice) and a certificate of service verifying such proof of service shall be attached to the proof of claim filed with the Clerk of Court.

**RULE 3002-1. Late Filed Claims in Chapter 12 and 13 Cases.**

Late filed proofs of claim in Chapter 12 or 13 cases shall be deemed disallowed, without need for formal objection by the trustee or a hearing, if the trustee sends a notice to the late filing creditor using Mont. LBR 21. If a creditor files a response and requests a hearing within ten (10) days of the date of the notice, then the creditor shall notice the contested matter for hearing pursuant to Mont. LBR 9013-1 and shall provide that the hearing on the objection and response shall be scheduled at least twenty (20) days after the date of the creditor’s response and request for hearing. If the creditor fails to file a written response to the objection to the late filed claim within ten (10) days of the date of the notice provided by Mont. LBR 21, the failure to respond shall be deemed an admission that the objection should be sustained by the Court without further notice or hearing. The trustee shall not pay on a claim filed after the claims bar deadlines described in F.R.B.P. 3002 or 3004, without a Court order obtained by the claimant allowing such claim.

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Related Authority:

11 U.S.C. § 502(b)(9)

Federal Rule of Bankruptcy Procedure 3002(c)

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**RULE 3003-1. Proofs of Claim and Interest in Chapter 11 Cases.**

In a Chapter 11 case, any request for a bar date by the debtor-in-possession for filing proofs of claim or interest shall be filed prior to the first date set for hearing on the disclosure statement. Pursuant to F.R.B.P. 2002(a), the plan proponent shall give twenty (20) days notice of the time to

file proofs of claims or interests to each creditor and equity security holder.

**RULE 3007-1. Overstated Proofs of Claim.**

A proof of claim found to be knowingly overstated or false as to any material item may be disallowed in its entirety by the Court, after hearing.

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Related Authority:

11 U.S.C. § 502

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**RULE 3007-2. Objections to Proofs of Claim.**

A trustee, debtor or other party in interest may file an objection to a creditor's proof of claim in accordance with F.R.B.P. 3007, by using Mont. LBF 28. The objection shall include the legal and factual basis for the objection. If a creditor files a response and requests a hearing within ten (10) days of the date of the objection, then the creditor shall notice the contested matter for hearing pursuant to Mont. LBR 9013-1 and shall provide that the hearing on the objection and response shall be scheduled at least 30 days after the date of the creditor's response and request for hearing. A creditor's failure to file a written response to an objection to a proof of claim and request a hearing within ten (10) days of the date of the objection provided by Mont. LBF 28 shall be an admission that the objection is well taken and the Court may sustain the objection without further notice or hearing.

**RULE 3010-1. Dividend Distribution.**

In any bankruptcy case, the case trustee shall distribute dividends to all entitled creditors, regardless of amount.

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Committee Note:

Pursuant to F.R.B.P. 3010, the Court by local rule can authorize the payment of small dividends to entitled creditors and not have small dividends treated as unclaimed funds payable to the

**RULE 3012-1. Valuation of Allowed Secured Claims in Chapter 11, 12 or 13.**

The amount of an allowed secured claim may not be litigated at a confirmation hearing in a case under Chapter 11, 12 or 13. Unless a written consent or stipulation is filed by the affected creditor allowing the fixing of the secured claim for purposes of the plan in an amount less than the creditor's total allowed claim as set forth in a filed proof of claim, the debtor shall move for a valuation hearing pursuant to F.R.B.P. 3012 at least thirty (30) days prior to the date set for the confirmation hearing by using Mont. LBF 22. If a creditor files a response and requests a hearing within ten (10) days of the date of the motion for valuation, then the creditor shall notice the contested matter for hearing pursuant to Mont. LBR 9013-1 and shall provide that the hearing on the motion for valuation and response shall be scheduled at least 20 days after the date of the creditor's response and request for hearing. If the creditor fails to file a written objection and request a hearing on the debtor's alleged amount of such allowed secured claim within ten (10) days of the date of the notice provided by Mont. LBF 22, the amount of such creditor's allowed secured claim shall be fixed in the amount set forth in the debtor's motion, and the creditor shall be deemed to have waived any objections to such valuation.

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Related Authority:

11 U.S.C. § 506

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**RULE 3015-1. Objections to Confirmation of Chapter 13 Plans.**

A party objecting to confirmation of a Chapter 13 plan or modification of a confirmed plan must file an objection and serve a copy on the debtor and debtor's attorney and the trustee not less than fifteen (15) days prior to the date set for the confirmation hearing. If the trustee has no objections, the trustee shall file a report with the Court, serving a copy on the debtor and debtor's attorney, recommending confirmation; the Court may, without further notice or hearing, grant confirmation if no timely objections are filed.

**RULE 3015-2. Amended Chapter 13 Plans.**

A debtor shall file any amended plan or addendum in a Chapter 13 case on or before ten (10) days prior to the date fixed by the Court for the confirmation hearing. The debtor shall file a certificate of service reflecting service of the amended plan on the trustee, all creditors, and all other parties in interest. If the trustee and all creditors have no objection to the amended plan, it will be

confirmed. If an amended plan or any additional amendment or addendum is filed within five (5) days of the date of the scheduled confirmation hearing, and an objection is filed prior to or at the scheduled hearing, the plan shall be denied confirmation and the case may be subject to dismissal without further notice or hearing.

**RULE 3015-3. Modification of Plan after Confirmation.**

A motion to modify a plan shall identify the modification and shall be filed together with the amended plan or addendum and served upon the trustee, all creditors and parties in interest. All parties shall then have ten (10) days thereafter for filing objections. If no objections are filed, the motion will be granted without further notice or hearing.

**RULE 3017-1. Filing Objections to Chapter 11 Disclosure Statements and Plans.**

Unless otherwise ordered by the Court, objections to the disclosure statement or plan in a Chapter 11 case shall be filed at least ten (10) days prior to the hearing on such statement or plan. Service of the objection shall be made on the debtor's counsel, a case trustee, if appointed, the U. S. Trustee, the creditors' committee, and any other party in interest requesting notice.

**RULE 3017-2. Report of Administrative Expenses in Chapter 11 Cases.**

The proponent of a plan of reorganization in a Chapter 11 case shall file an estimate of administrative expenses not less than ten (10) days prior to the date fixed for the hearing on confirmation of the plan. Such administrative expenses shall include, but are not limited to, the debtor's attorney's fees, accountant's fees, any other professionals fees, and the fees owing to the Clerk of Court and the U. S. Trustee.

**RULE 3017-3. Small Business Chapter 11 Reorganization Cases.**

In a Chapter 11 reorganization case, a debtor that is a small business may elect to be considered a small business by filing a written statement of election no later than sixty (60) days after the date of the order for relief or by a later date as the Court, for cause, may fix.

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Related Authority:

11 U.S.C. §§ 101(51C), 1121(e), and 1125(f)  
Federal Rule of Bankruptcy Procedure 3017.1

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**RULE 3020-1. Quarterly Fees in Chapter 11 Cases.**

In accordance with 11 U.S.C. § 1129(a)(12), the Court shall not confirm a Chapter 11 plan unless the U. S. Trustee notifies the Court using Mont. LBF 12 that all fees required by 28 U.S.C. § 1930 have been paid or will be paid on or before the effective date of the plan.

**RULE 3022-1. Chapter 11 Case Closings.**

To facilitate the closing of Chapter 11 cases in accordance with F.R.B.P. 3022, the debtor-in-possession (or trustee) shall file a Motion for Final Decree within ninety (90) days of the Order of Confirmation of the plan in conformity with Mont. LBF 13. The U.S. Trustee, creditors and parties in interest shall have ten (10) days thereafter to file objections. If no objections are filed, the motion shall be granted without further notice or hearing and the final decree shall be entered.

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Related Authority:

11 U.S.C. § 350(a)

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Committee Note:

Section 28 U.S.C. § 1930(a)(6) was amended on January 27, 1996, to provide that quarterly fees due the U.S. Trustee in a Chapter 11 case are payable after confirmation of a plan until the case is closed by the Court. The amendment applies to all pending cases, including those with confirmed plans.

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**PART IV**

**RULE 4001-1. Motions for Relief from Stay.**

(a) **Motion.** A motion for relief from the automatic stay under 11 U.S.C. § 362 shall be

made in conformity with Mont. LBF 8, if appropriate, and promptly served in a Chapter 7, 12 or 13 case by the moving party upon the debtor's counsel, the trustee, if any, the U. S. Trustee, and any entity requesting special notice, and in a Chapter 9 or 11 case upon the entities identified above and any committee appointed under the Code or its authorized agent, or, if no committee has been appointed, the creditors listed under F.R.B.P. 1007(d). Consents to the motion shall conform to Mont. LBF 9 and 9-A. No excerpts of the security documents need be attached to a motion for relief if a proof of claim has been filed on or before the motion for relief has been filed. Instead, such excerpts of the security documents should be attached to the proof of claim filed on or before the motion for relief, and reference to such proof of claim shall be made in the motion for relief.

(b) **Response and Hearing.** If a debtor, trustee or party in interest files a response and requests a hearing within ten (10) days of the date of the motion for relief, then the responding party, in the response, shall notice the contested matter for hearing pursuant to Mont. LBR 9013-1 for the next hearing date scheduled in the division within which the case is filed. In the event such scheduled hearing date is thirty (30) days beyond the date of the motion for relief, then a preliminary hearing within such thirty (30) day period will be scheduled by the responding party after such party contacts the Clerk of Court to confirm the preliminary telephone hearing date and time, which shall be set forth in the response. The response and request for hearing must contain the following:

- (1) If valuation of property is an issue, the estimation of value asserted by the respondent.
- (2) If the existence, validity, or any other aspect of the notes or security documents is an issue, such objections must be stated with particularity.
- (3) If the respondent proposes to offer adequate protection, it must state with specificity the adequate protection offered to be provided (e.g., periodic payments, substitute liens, or other indubitable equivalents).

(c) **Failure to Respond.** A failure to file a written response to the motion for relief by the debtor, trustee or party in interest and request a hearing within ten (10) days of the date of the motion for relief shall be an admission that the motion for relief should be granted and the Court may grant the motion for relief without further notice or hearing.

(d) **Stipulation for Relief from Stay.** A stipulation for relief from the automatic stay, filed in compliance with Mont. LBF 8-A, joined by the creditor, debtor and trustee, if any, may be filed without fee and an order shall be promptly issued without hearing.

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Related Authority:

**RULE 4002-1. Property in Need of Attention or Protection.**

(a) **Inventory or Equipment.** When a stock of goods or inventory, or business equipment is scheduled, the debtor shall, immediately after the general description thereof, provide a detailed list of such inventory and business equipment and the respective value, append a brief explanation of its exact location, the name and address of the custodian thereof, the protection being given such property, and the amount of fire and theft insurance, if any, and state whether prompt additional attention or protection is necessary.

(b) **Need for Immediate Action.** If a stock of goods includes perishables, or if property or the business premises otherwise requires immediate attention or protection, the debtor or the debtor's attorney, when relief is ordered under Chapters 7, 12 or 13, or when a trustee is appointed under Chapter 11, shall notify the trustee of the need for immediate action. Notification shall be by personal communication or by telephone.

**RULE 4002-2. Annual Financial Reports in Chapter 12 Cases.**

Every debtor whose Chapter 12 case has not been closed by the Court prior to the end of each calendar year shall prepare and serve on the trustee annually the following materials: an annual summary of operations, using the report form prescribed by the trustee; an annual financial statement; and a balance sheet. The latter two documents may be copies of financial statements and balance sheets provided to lenders by the debtor.

**RULE 4002-3. Plan Payments in Chapter 12 Cases.**

All plan payments made by the debtor-in-possession to the Chapter 12 trustee shall be paid by cashiers check or certified check at least ten (10) days prior to the payment dates specified in the debtor's plan, or at least twenty-five (25) days prior to such dates if paid by the debtor's personal check.

**RULE 4002-4. Estimate of Administrative Expenses in Chapter 12 Cases.**

The debtor shall file an estimate of administrative expenses, containing the detail required in Mont. LBR 3017-2, at least ten (10) days before the confirmation hearing.

**RULE 4002-5. State Income Tax Returns in Chapter 12 Cases.**

To ensure compliance with the debtor’s duties under 11 U.S.C. § 1203, the debtor-in-possession, and not the trustee (except in the event the debtor-in-possession is removed pursuant to 11 U.S.C. § 1204 without reinstatement), shall perform all functions and duties required by 11 U.S.C. § 1231(b).

**RULE 4002-6. Monthly Financial Reports in Chapter 13 Cases.**

A monthly financial report shall be filed by every debtor engaged in business and shall be served on the trustee within fifteen (15) days following the end of each calendar month reflecting the debtor’s income and expenses, for purposes of establishing the debtor’s projected disposable income.

**RULE 4003-1. Claims of Exemptions.**

A debtor shall claim exemptions, as required by 11 U.S.C. § 522, on Schedule C, pursuant to F.R.B.P. 1007. The MONTANA CODE ANNOTATED section or other authority under which each exemption is claimed, and each item of property claimed as exempt, together with the value of each such item, shall be described with specificity, without reference to other schedules.

**RULE 4003-2. Homestead Exemptions.**

If a homestead exemption is claimed by the debtor, the date and place of recordation of the homestead declaration shall be included in either Schedule A or Schedule C, and a copy of the declaration of homestead reflecting the date and place of recordation shall be delivered to the trustee, either prior to or at the meeting of creditors held pursuant to 11 U.S.C. § 341(a).

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Related Authority:

MONTANA CODE ANNOTATED §§ 70-32-105, 106 and 107

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**RULE 4003-3. Objections to Claims of Exemption.**

A trustee or other party in interest may file an objection to a debtor’s claim of exemption in accordance with F.R.B.P. 4003(b), by using Mont. LBF 29. The objection shall include a legal and factual basis for the objection. If a debtor files a response and requests a hearing within ten (10) days of the date of the objection, then the debtor shall notice the contested matter for hearing pursuant to Mont. LBR 9013-1 and shall provide that the hearing on the objection and response shall be

scheduled at least twenty (20) days after the date of the debtor's response and request for hearing. If the debtor fails to file a written response to the objection to the claim of exemption within ten (10) days of the date of the notice provided by Mont. LBF 29, the failure to respond shall be deemed an admission that the objection should be sustained by the Court without further notice or hearing.

**RULE 4003-4. Motions for Avoidance of Liens.**

A debtor shall move to avoid liens pursuant to 11 U.S.C. § 522(f)(1) by filing Mont. LBF 24. If a creditor files a response and requests a hearing within ten (10) days of the date of the motion, then the creditor shall notice the contested matter for hearing pursuant to Mont. LBR 9013-1 and shall provide that the hearing on the objection and response shall be scheduled at least 20 days after the date of the creditor's response and request for hearing. If the creditor fails to file a written objection to the debtor's motion, addressing with specificity the allegations contained therein, within ten (10) days of the date of the notice provided by Mont. LBF 24, the creditor shall be deemed to have waived any objection to avoidance of its lien.

**RULE 4008-1. Reaffirmation Agreements.**

All reaffirmation agreements executed pursuant to 11 U.S.C. § 524 shall be made using Mont. LBF 10 and 10-A or Official Form B 240 issued by the Administrative Office of the United States Courts, and filed with the Clerk within sixty (60) days following the first date set for the first meeting of creditors scheduled pursuant to 11 U.S.C. § 341(a), or such time as extended by the Court or these Local Rules. If no written reaffirmation agreement is timely filed, the Court will enter the debtor's discharge and the Clerk may close the case. Upon the filing of a completed reaffirmation agreement, the Court will determine whether the requirements of 11 U.S.C. § 524 have been satisfied without a hearing if the debtor is represented by an attorney, and if compliance is shown, will approve the reaffirmation agreement by using Mont. LBF 10-B. A reaffirmation agreement filed by a debtor, without benefit of an attorney during the negotiations of such agreement, will be set for hearing before the Court, prior to approval.

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Related Authority:

11 U.S.C. § 524(c) and (d)

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**PART V**

**RULE 5001-1. Clerk's Office Hours and Address.**

The Office of the Clerk of the Bankruptcy Court is located in the Federal Building, Room

303, 400 North Main, in Butte, Montana 59701, and shall be open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, for the filing of papers. The mailing address for the Clerk of the Bankruptcy Court is P.O. Box 689, Butte, Montana 59703. All original papers shall be filed with the Clerk and not with any Judge. No papers or documents shall be filed with the U.S. District Court Clerk or at the Bankruptcy Judge's office. FED. R. CIV. P. 77 applies to the Clerk's Office.

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Related Authority:

11 U.S.C. § 301  
Federal Rules of Bankruptcy Procedure 5001, 5003 and 5005

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**RULE 5001-2. Divisions of Court.**

The Bankruptcy Court for the District of Montana is divided into the following Divisions, and Court trials or hearings are held in each Division depending upon the debtor's county of residence or principal place of business, to-wit:

- (a) Billings Division: Big Horn, Carbon, Carter, Custer, Daniels, Dawson, Fallon, Garfield, Golden Valley, McCone, Musselshell, Petroleum, Powder River, Prairie, Richland, Roosevelt, Rosebud, Sheridan, Stillwater, Sweetgrass, Treasure, Valley, Wheatland, Wibaux and Yellowstone.
- (b) Butte Division: Beaverhead, Broadwater, Deer Lodge, Jefferson, Gallatin, Granite, Lewis & Clark, Madison, Park, Powell and Silver Bow.
- (c) Missoula Division: Flathead, Lake, Lincoln, Mineral, Missoula, Ravalli and Sanders.
- (d) Great Falls Division: Blaine, Cascade, Chouteau, Fergus, Glacier, Hill, Judith Basin, Liberty, Meagher, Phillips, Pondera, Teton and Toole.

**RULE 5001-3. Hearings and Meetings.**

Bankruptcy Court trials and hearings are regularly scheduled in Butte, Missoula, Great Falls and Billings. Creditor meetings conducted pursuant to 11 U.S.C. § 341(a) are held in these four cities, and in Kalispell.

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Related Authority:

28 U.S.C. § 151

**RULE 5003-1. Withdrawal of Documents from Proofs of Claim.**

After a proof of claim has been filed, the Clerk may, without an order of the Court, permit the substitution by the claimant of a photocopy for any original note or other instrument in writing filed in support of such claim. The original, upon return, may be endorsed reflecting its attachment to a claim in a bankruptcy proceeding.

**RULE 5003-2. Exhibits to Pleadings and Proofs of Claim.**

All exhibits shall be attached to the pleading or proof of claim to which they belong so as to be easily accessible and readable without detachment from the principle document, and shall be reduced to 8 1/2" x 11". Entities filing exhibits not prepared in electronically produced text shall scan and electronically file only excerpts of the documents that are directly germane to the matter under consideration by the Court. Excerpted material must be clearly and prominently identified as such, and the complete exhibit must be made available forthwith to the attorneys and the Court on request. Entities filing excerpts do so without prejudice to their right to file by electronically scanning additional excerpts or the complete document with the Court. Responding entities may file by electronically scanning additional germane excerpts. Oversized and voluminous attachments will not be filed and will be returned by the Clerk. Filing attachments by other than electronic means is not encouraged, but may be permitted at the discretion of the Court.

**RULE 5003-3. Registry Funds.**

The Clerk of the Bankruptcy Court shall assess a fee for the handling of all funds deposited in proceedings with the Court and held in interest bearing accounts or instruments pursuant to 28 U.S.C. § 2041 and Rule 67, FED. R. CIV. P. The fee shall be equal to ten percent (10%) of the income earned while the subject funds are held in the Court's registry. The fee may be taxed as a cost by the Court, and applies to funds deposited after December 1, 1990.

**RULE 5005-1. Electronic Filing.**

Documents may be filed, signed, or verified by electronic means according to rules and procedures adopted by the Court. A document filed by electronic means in compliance with this rule constitutes a written paper for the purposes of applying these rules, the Federal Rules of Civil Procedure made applicable by any rule and § 107 of the Bankruptcy Code. Until the Case

Management/Electronic Case Filing system (“CM/ECF”) is fully implemented in this Court, documents shall be filed, signed and verified by means that are consistent with these rules and any subsequent general orders issued by the Court. Instructions and procedures for electronic filing shall be distributed by the Clerk to members of the Bar and interested parties, will be posted on the Court’s website at [www.mtb.uscourts.gov](http://www.mtb.uscourts.gov), and will be available from the Clerk’s Office upon request.

**RULE 5005-2. Facsimile Filing.**

Fax filings may be accepted by the Clerk. All faxed copies shall be stamped "received" by the Clerk, and the original document must be filed with the Clerk within three (3) business days in order to be filed as of the "received" date of the fax copy. The fax copy and the original document must be identical, or the filing is void. If the original is not timely filed, the fax "received" copy shall be void. The Court may impose appropriate sanctions *sua sponte* if it determines that fax documents are submitted for any improper or abusive purpose.

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Related Authority:

Federal Rules of Bankruptcy Procedure 5005

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**RULE 5005-3. Filing Papers and Size of Papers.**

(a) **Size and Format.** Filings and attachments must conform to these specifications, except as may be modified by the Court’s implementation of CM/ECF:

- (1) be on 8 ½ x 11 inch paper;
- (2) be plainly legible, whether typed or duplicated in at least 12 point font size, except the master mailing list shall be in 10 point font size;
- (3) have no less than one inch (1") margins, exclusive of page numbers;
- (4) be consecutively paginated, with page numbers on the bottom of the page;
- (5) be double-spaced, except for quoted material and footnotes;
- (6) be one-sided, not 2-sided;
- (7) use a nationally recognized citation form, (i.e., The Harvard Citator or the Association of Legal Writing Directors (ALWD) Citation Manual);

(8) be pre-punched to accommodate a 2 3/4 inch two-prong fastener centered at the top of the page; and

(9) NOT be stapled, but only be bound by paper or binder clip.

(b) **Identification of Attorney and Party.** The following information must appear in the upper left-hand corner of the first page of each paper presented for filing, except that in multiparty or multiattorney actions or proceedings, reference may be made to the signature page for the complete list of attorneys and parties represented:

(1) name of the attorney (or, if *in propria persona*, the name of the party);

(2) office mailing address;

(3) telephone number;

(4) facsimile number;

(5) e-mail address;

(6) state bar I.D. number;

(7) specific identification of party represented by name and interest in litigation (i.e., plaintiff, defendant, etc.).

Should a party be without an address or telephone, the document shall set forth a work or third party's address or telephone number where the party may be contacted.

(c) **Signature Compliance.** An original document shall contain an original signature at the end of the document being filed. A fax document shall contain a photographic signature. An e-mail signature shall comply with the rules adopted through the implementation of CM/ECF. Prior to CM/ECF implementation, and pursuant to Court authorization, an e-mail document shall provide a conformed signature above the typewritten name of the person filing the document in the following form:

“/s/(name of person filing document)”  
(typed name of person)

A signature, whether original, photocopied or conformed, shall constitute the person's verification that such person has read the contents of the pleading and certification that F.R.B.P. 9011(b) has been satisfied.

#### **RULE 5005-4. Custody of Records and Release.**

No record or paper belonging to the files of the Court shall be taken from the custody of the Clerk except with the permission of the Judge to whom the case is assigned, and a receipt given by the party obtaining it, specifying the record or paper, the date of its receipt, and the date it is to be returned. In the event the presiding Judge is not available or cannot be reached to give permission, then the Clerk or deputy in charge of the office is vested with the discretion to release any record or paper.

**RULE 5005-5. Custody of Exhibits and Release.**

Every exhibit placed on file shall be held in the custody of the Clerk. Unless good reason exists why the original should be retained, upon application or on its own motion, the Court may order a copy filed in its place.

Any party may withdraw, after service to all parties, any exhibit the party has filed upon filing a waiver of the right to an appeal and to a new trial. If another party or witness files notice within five (5) days thereafter requesting withdrawal of the same exhibit, the Clerk shall keep the exhibit in custody until the Court has determined who is entitled to it or until all interested persons consent to its release. If exhibits are not withdrawn within thirty (30) days after the judgment has become final, the Clerk may dispose of them within a reasonable time after notice to the party offering the exhibit.

**RULE 5009-1. Trustee's Report and Accounting in Chapter 12 and 13 Cases.**

Within thirty (30) days following the entry of an order of conversion or dismissal the trustee in a Chapter 12 or 13 case shall file a report and accounting of all receipts and disbursements made pursuant to the plan, and shall serve a copy of such final report and accounting on the debtor or debtor's counsel, the U. S. Trustee, and all creditors or other parties in interest.

In a completed Chapter 12 or 13 case, the trustee shall report to the Court that the debtor has completed payments within thirty (30) days of the final distribution of funds under the plan. The Clerk shall issue the discharge order upon receipt of the notice of completion of the plan payments. The trustee shall file his final report and account with the Court as soon as practicable after the last disbursement check clears the trustee's bank, and shall serve a copy of such final report and accounting on the debtor or debtor's counsel, the U. S. Trustee, and all creditors or other parties in interest.

**RULE 5011-1. Withdrawal of Reference.**

(a) **Motion to Withdraw Reference.** A motion to withdraw a case or proceeding under 28 U.S.C. § 157(d) shall be filed with the Clerk of the District Court and heard by a District Judge. The moving party shall file a copy of the motion with the Clerk of the Bankruptcy Court.

(b) **Recommendation of Bankruptcy Court.** A Bankruptcy Judge may on the Judge's own motion recommend that a case or proceeding be withdrawn under 28 U.S.C. § 157(d). Such a recommendation shall be served on the parties to the case or proceeding and forwarded to the Clerk of the District Court for assignment to the appropriate Judge of the District Court.

(c) **Designation of Record.** The moving party shall serve and file, together with the motion to withdraw the reference, a designation of those portions of the record of the proceedings in the Bankruptcy Court that the moving party believes will reasonably be necessary or pertinent to the District Court's consideration of the motion. Within ten (10) days after service of such designation of record, any other party may serve and file a designation of additional portions of the record. If the record designated by any party includes a transcript of any proceeding or a part thereof, that party shall immediately after filing the designation, deliver to the reporter and file with the Clerk of the Bankruptcy Court, a written request for the transcript and make satisfactory arrangements for payment of its cost. All parties shall take any other action necessary to enable the Clerk to assemble and transmit the record. The parties shall submit only that part or parts of a transcript of proceedings relevant to the issues raised in the motion for withdrawal of reference. If the issues involve only questions of law, the parties may submit an agreed statement of facts, or such parts of the record as are relevant to such questions of law, unless the District Judge considering the motion directs otherwise.

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Related Authority:

28 U.S.C. § 157(d)

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#### **RULE 5070-1. Calendars and Scheduling.**

(a) **Consent Calendar.** A consent calendar shall precede each regularly scheduled hearing calendar, which will allow any matter scheduled for hearing to be placed on such consent calendar for purposes of resolution by stipulation or agreement. Parties or their counsel, without the submission of evidence, may appear at the time of the consent calendar and advise the Court of the case and the settlement terms. Upon concurrence by the Court, the hearing on the matter will be vacated, and the parties shall be granted up to five (5) days (unless extended by the Court) to file a written stipulation and proposed order. The Court reserves the right to call the matter as originally scheduled.

(b) **Scheduling.** Attorneys shall schedule hearings for all matters to be heard in any division, except that only the Court shall set hearings for pre-trial conferences in adversary proceedings, disclosure statement hearings, and confirmation hearings for Chapters 11, 12 and 13 cases. The Court may at anytime reschedule matters.

**RULE 5071-1. Request for Continuance.**

Any party requesting the continuance of a trial, hearing or conference shall:

- (a) File a motion seeking the continuance at least three (3) business days prior to the scheduled trial, hearing or conference;
- (b) Advise the Court of the affected party's response to such request or what attempts have been made to gain each party's consent; and
- (c) Give telephone notice of the date, time and location of, and reason for, the continued hearing to all affected parties and file written confirmation of such notice with the Clerk within two (2) business days of receiving such information from the Court.

**RULE 5072-1. Courtroom Decorum.**

The following procedures are to be followed in all proceedings in open court:

- (a) there shall be no oral confrontation or colloquy directly between opposing attorneys or parties;
- (b) all persons addressing the Court shall stand, and address the Court from the podium or from a microphone location to improve the quality of the recording;
- (c) all objections shall be stated with specificity prior to any argument or explanation of same, (i.e., leading, hearsay, improper foundation, etc.);
- (d) during the testimony of a witness, attorneys shall not approach the witness box, bench, or clerk's bench without the Court's prior approval, and all persons within the courtroom shall be treated with dignity and respect;
- (e) counsel shall request assistance from the courtroom deputy if they wish to use blackboards, view boxes, or other audio-visual aids and shall make their request sufficiently in advance of the need to allow for set-up of this equipment when the Court is not in session;
- (f) counsel shall address each other and all witnesses by formal name (rather than by first name) during all court proceedings; and
- (g) all attorneys shall wear business, not business casual, attire while appearing before the Court.

**RULE 5073-1. Photography, Recording Devices & Broadcasting.**

(a) **Prohibition Against Certain Devices.** The use of cameras, radios, portable telephones, paging devices, tape recorders, and the like is expressly prohibited in any court facility, except with the Court's permission. Failure to follow this rule shall be grounds for refusal of admission to court facilities and may subject the offender to removal from the court facility and other sanctions imposed by the Court.

(b) **Broadcasting and Recording by Court.** The Court may permit electronic or photographic preservation of evidence and perpetuation of the record. The Court may also permit broadcasting, televising, or photographing of ceremonial proceedings. The Court may conduct video conferences at the established court locations in Butte, Billings, Great Falls and Missoula and at off-site locations.

**RULE 5074-1. Telephone, Video or In-Person Conferences and Hearings.**

(a) **Conference and Hearings.** The Court may schedule any matter in a bankruptcy case, contested matter or adversary proceeding to be heard by video or telephone conference. Any party in interest affected by or involved in such case, matter or proceeding may request the Court to hear the matter by telephone or video conference, or in-person. Requests for in-person hearings shall be made in substantial conformity with Mont. LBF 26, and may be granted at the discretion of the Court. The Court may, at its discretion, hold pretrial conferences in adversary proceedings, preliminary hearings on motions to modify and any other matter requiring an emergency hearing by telephone.

(b) **Exchange of Exhibit and Witness Lists.** The parties involved in video and in-person conferences and hearings shall exchange proposed witness and exhibit lists and copies of all proposed exhibits, and file such lists and exhibits with the Court, at least three (3) business days prior to a hearing or trial. The moving party in a contested matter and the plaintiff in an adversary proceeding shall identify exhibits in numerical sequence commencing with the number 1. The responding party in a contested matter and the defendant in an adversary proceeding shall identify exhibits in alphabetical sequence. If multiple parties are involved, the parties prior to hearing or trial shall determine an identification sequence that eliminates any duplicative sequence. Failure to timely exchange and file proposed witness and exhibit lists and copies of proposed exhibits in accordance with this rule may result in the Court barring any undisclosed witness testimony and denying the admission of any unexchanged exhibits. This Local Rule may be affected by the implementation of CM/ECF. Subsequent general orders of this Court may alter the filing and exchanging of exhibits to correspond to the capability of CM/ECF and its filing users.

**RULE 5078-1. Clerk's Fees in Chapter 13 Cases.**

Unless otherwise ordered, the trustee in a Chapter 13 case shall pay any claim of the Clerk for fees or costs incurred in a case at the time of the initial distribution under the plan. The Clerk shall provide a statement of such fees or costs to the trustee immediately following the confirmation of the

plan.

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Related Authority:

28 U.S.C. § 1930

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## PART VI

### **RULE 6006-1. Motions for Assumption or Rejection of an Executory Contract or Unexpired Lease.**

(a) **Motion.** A motion for assumption or rejection of an executory contract or unexpired lease under 11 U.S.C. § 365 shall be made in conformity with Mont. LBF 25, if appropriate, and promptly served in a Chapter 7, 12 or 13 case by the moving party upon the debtor's counsel, the trustee, if any, the U. S. Trustee, and any entity requesting special notice, and in a Chapter 9 or 11 case upon the entities identified above and any committee appointed under the Code or its authorized agent, or, if no committee has been appointed, the creditors listed under F.R.B.P. 1007(d). Executory contract or lease documents shall be attached to the motion, unless such documents are attached to a timely filed proof of claim or otherwise located in the file; and reference to such proof of claim by number or file location by docket number shall be made in the motion.

(b) **Response to Motion.**

(1) If a debtor, trustee or party in interest files a response and requests a hearing within ten (10) days of the date of the motion to assume or reject, then the debtor or trustee shall notice the contested matter for hearing pursuant to Mont. LBR 9013-1 and shall provide that the hearing on the contested matter shall be scheduled at least 20 days after the date of the response and request for hearing. If a debtor, trustee or party in interest does not file a response within ten (10) days of the date of the motion, the Court may grant the relief requested as a failure to respond by the debtor, trustee or party in interest shall be deemed an admission that the relief requested should be granted. Any response must state with specificity the grounds for any and all objections, including citation to applicable statutes and case law, provisions of the executory contract or unexpired lease in question, and the facts regarding whether any default exists under the executory contract or unexpired lease.

(2) If the debtor or trustee proposes to offer a cure of default or adequate assurance, the response must state with specificity the terms of the cure or adequate assurance

the debtor or trustee offers to provide (e.g., periodic payments, substitute liens, or other indubitable equivalents).

(c) **Stipulation for Assumption or Rejection of Executory Contract or Unexpired Lease.** A stipulation for assumption or rejection of an executory contract or unexpired lease, joined by the creditor, debtor and case trustee, if any, may be filed and an order shall be promptly issued without hearing.

**RULE 6007-1. Abandonment.**

Abandonment or other disposition of property shall be accomplished pursuant to F.R.B.P. 6007 and in conformity with Mont. LBF 11. The trustee or debtor in possession shall give notice to all entities specified in F.R.B.P. 6007.

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Related Authority:

11 U.S.C. § 554  
Federal Rule of Bankruptcy Procedure 6007

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**PART VII**

**RULE 7001-1. Adversary Proceedings; General.**

Reserved

**RULE 7004-1. Summons and Service.**

Reserved

**RULE 7005-1. Service by Electronic Means.**

FED. R. CIV. P. 5, as amended, applies in adversary proceedings. In addition to other methods of service described in FED. R. CIV. P. 5, service by electronic means is allowed provided the entity being served consents in writing to such electronic service. An entity or the Court may make service under this Local Rule through electronic means by using the Court's transmission facilities, wherein the notice of electronic filing generated by CM/ECF (which contains a hyperlink to the filed document) shall constitute service of the document, pleading or other paper.

## **RULE 7016-1. Pretrial Procedures.**

(a) **In Default Cases.** If the defendant has failed to appear or respond within the time permitted for an appearance or response, the procedure outlined herein shall not be applicable, but the Court may direct the party not in default to appear or to file a pleading for the purpose of noting a default, the entry of a default judgment, and for scheduling a date for trial on the issue of damages if required by law. If the party not in default fails to take action to prosecute its claim after reasonable notice to appear or take such action, the Court may dismiss the proceeding for failure to prosecute.

(b) **Case Scheduling Conference; Pretrial Conference; and Order.** Within twenty (20) days after the defendant files an answer, the Court will issue an order scheduling a telephone conference with all attorneys representing parties and with any *pro se* litigants to discuss time limits to be contained in a case scheduling order that limits the time: (1) to complete discovery; (2) to join parties and to amend pleadings; (3) to file pretrial motions; (4) to conduct and complete alternative dispute resolution procedures; (5) to file the pretrial order; (6) to exchange exhibits and identify witnesses; (7) to file pretrial memoranda with the Court; and (8) to set the trial date. An order containing the above time limits will be issued by the Court upon completion of the telephone conference. If multiple defendants exist in an adversary proceeding, the Court, in its discretion, can issue an order scheduling a telephone conference to establish appropriate dates for the appearing defendants and to determine the status of service of process on any unserved defendants. The Court, in its discretion, may set such additional pretrial conferences for the purposes of expediting the disposition of the case, establishing early and continuing control, discouraging wasteful pretrial activities, improving thorough preparation and facilitating the settlement of the case. During the case scheduling conference, the parties shall discuss whether alternative dispute resolution may be beneficial in resolving any contested issues. Pursuant to the authorization of FED. R. CIV. P. 26(d), as incorporated in F.R.B.P. 7026, this Court through this rule and by other appropriate order directs that discovery may be commenced after the complaint is filed, without leave of Court. Furthermore, all parties are expected to satisfy the provisions of initial disclosure contained in FED. R. CIV. P. 26(a), without the need for any formal discovery requests.

(c) **Initial Conference and Discovery Plan.** During the case scheduling conference, the parties shall orally discuss the names and addresses of individuals likely to have discoverable information, discuss the need for and the names and addresses of possible expert witnesses, discuss the existence and availability of documents, and discuss a computation of damages, if applicable. Any information discussed shall be supplemented immediately upon discovering more complete or more accurate information. The parties shall further discuss a discovery plan that addresses the nature and complexity of the claims or defenses alleged in the litigation.

## **RULE 7016-2. Continuances of Dates Set in Case Scheduling Order.**

The parties and their attorneys are governed by the dates set forth in the Order entered immediately after the pretrial conference and no extensions or continuances shall be granted in the absence of a showing of good cause. Mere failure on the part of counsel to proceed promptly with the normal processes of discovery shall not constitute good cause for an extension or continuance.

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Related Authority:

Federal Rules of Civil Procedure 16 and 26

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Committee Note

Mont. LBR 7016 and 7026 are based on Rules 16 and 26, FED. R. CIV. P., as F.R.B.P. 7016 and 7026 incorporate by reference the Federal Rules of Civil Procedure. To promote thorough preparation for trial, to conserve scarce judicial resources and to expeditiously conclude litigation, the Court, pursuant to the local rules and the discretion and authority permitted by the rules to issue orders modifying strict compliance with the federal rules given the varying nature and complexity of the adversary proceedings filed before the Court, shall generally consolidate and coordinate the conferences and disclosures required under the federal rules.

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**RULE 7026-1. Discovery.**

(a) **Initial Disclosure.** Pursuant to F.R.B.P. 7026, the provisions of FED. R. CIV. P. 26(a)(1) apply in this Court, unless the Court orders otherwise. Mont. LBR 7016-1(c) provides that the initial disclosures and the discovery plan shall be considered and discussed during the case scheduling conference. Prior to the completion of the case scheduling conference, parties may commence discovery, without leave of court. *See* Mont. LBR 7016-1(b).

(b) **Limits on Depositions.** No party shall take more than ten (10) depositions, whether upon oral examination under F.R.B.P. 7030 or upon written questions under F.R.B.P. 7031. Exceptions to this rule may be granted by the Court only upon written motion showing good cause. Transcripts of depositions need not be filed with the Clerk.

(c) **Requirement of a Writing.** All objections to interrogatories, depositions, requests, applications under F.R.B.P. 7037, and all motions and replies concerning discovery matters shall be in writing and recite with specificity the offending interrogatory, deposition, request, or application. If time does not permit the filing of a written motion, the Court may, in its discretion, waive this requirement.

(d) **Objections to Discovery Process.** An objection to any interrogatory, deposition, request, or application under F.R.B.P. 7037 shall be filed within 30 days after service of the

offending interrogatory, deposition, request, or application unless otherwise ordered by the Court. The filing of an objection shall not extend the time within which the objecting party must otherwise answer or respond to any discovery matter not specifically included in the objection.

(e) **Mandatory Conference Among Attorneys.** The mandatory F.R.B.P. 7026(f) conference shall be conducted in conjunction with the case scheduling conference pursuant to Mont. LBR 7016-1(b). Attorneys are further encouraged to participate in non-court, pretrial discovery conferences to decrease contentious actions by the attorneys and parties and the filing of unnecessary discovery motions. A motion concerning a discovery dispute shall not be filed until all attorneys have explored the possibility of resolving the discovery matters in controversy. The Court will not consider any motion concerning a discovery matter unless the motion is accompanied by a statement from the attorney that a good faith effort has been made by the attorney to resolve the discovery matter at issue.

(f) **Motions to Compel.** After a discovery request is objected to or not complied with in a timely manner, and if not otherwise resolved under subsection (e), it is the responsibility of the party initiating discovery to place the matter before the Court in a timely manner. To compel an answer, production, designation, or inspection, a motion must be filed under F.R.B.P. 7037. However, a party properly noticed of a deposition must appear and submit to the deposition unless a motion to quash has been granted.

(g) **Other Discovery Motions.** Motions for a protective order under F.R.B.P. 7026(c) and motions to compel physical or mental examination, including F.R.B.P. 7035, shall comply with Mont. LBR 9013-2 and subsection (f) hereof.

(h) **Discovery Replies.** Replies to discovery motions shall be filed within ten (10) days after service of the motion, unless otherwise ordered by the Court.

(i) **Compliance with Discovery Orders.** After the Court has ruled on a discovery motion, any answer, production, designation, inspection, or examination required by the Court shall be done within ten (10) days after the entry of the order of the Court, oral or otherwise, unless otherwise ordered by the Court.

(j) **Failure to Comply with Order.** Should a party fail to comply with an order of the Court concerning discovery motions, it is the responsibility of the objecting party to place the matter before the Court by a proper motion for supplementary relief under F.R.B.P. 7037.

(k) **Unnecessary Discovery Motions or Objections.** The presentation to the Court of unnecessary discovery motions or requests, as well as unwarranted opposition to proper discovery proceedings, may subject the offender to remedies and sanctions, including the imposition of costs and attorney fees.

**RULE 7055-1. Default and Default Judgement.**

(a) **By the Clerk.** A judgment of default may be entered by the Clerk upon application for default judgment with affidavits and amount due, including costs and disbursements if any, filed by the party entitled to judgment other than under 11 U.S.C. §§ 523 or 727. The affidavit shall include a statement that no defense or other response of any kind has been received, or if received shall detail the defense or other response received. If the party in default has appeared in the proceeding, notice of the application for default judgment shall be served pursuant to F.R.B.P. 7055 as it incorporates FED. R. CIV. P. 55(b)(2). The Court may order a hearing on any application for default judgment.

(b) **Documents to Submit.** When a party is entitled to have a default judgment entered by the Clerk pursuant to F.R.B.P. 7055 and FED. R. CIV. P. 55(b)(1), the party must submit the following:

- (1) application for Clerk's entry of default pursuant to subsection (2) below;
- (2) the actual Clerk's entry of default, which will be completed by the Clerk's Office when the required information is verified;
- (3) a motion for entry of default judgment by the Court pursuant to (4) below; and
- (4) a proposed default judgment with a statement showing the following:
  - (A) the principal amount due, not to exceed the amount of the original demand, giving credit for any payments and showing the amounts and dates of all payments;
  - (B) a computation of accrued interest to the proposed date of judgment; and
  - (C) any costs and taxable disbursements claimed.

(c) **Affidavit.** An affidavit of counsel or the party seeking default judgment must be attached to the default request showing:

- (1) that the party against whom judgment is sought is not an infant, an incompetent person, or in the military service;
- (2) that service of the summons and complaint was properly made in compliance with F.R.B.P. 7004;
- (3) that the party has defaulted in the obligation to appear or respond in the action;
- (4) that the amount shown by the statement is justly due and owing and that no part

thereof has been paid except as stated; and

(5) that the disbursement sought to be taxed has been made in the action or will necessarily be made or incurred.

The Clerk shall then enter judgment for principal, interest, and costs.

(d) **By the Court.** When applying for entry of default judgment pursuant to F.R.B.P. 7055 and FED. R. CIV. P. 55(b)(2) the following papers must be filed:

(1) a motion for entry of default judgment;

(2) a proposed default judgment order; and

(3) an itemized statement regarding damages being requested and the basis therefor.

#### **RULE 7056-1. Summary Judgment.**

(a) **Summary Judgment Motions.** In addition to the following requirements, Mont. LBR 9013-1 and Mont. LBR 9013-2 shall apply to summary judgment motions.

(1) **Statement of Uncontroverted Facts.** A separate, short, and concise “Statement of Uncontroverted Facts” must accompany every motion for summary judgment. Failure to submit this statement constitutes grounds for denial of the motion. The statement shall set forth separately each fact, in serial, not narrative form, and shall specify the specific portion of the record where the fact can be found (e.g., affidavit, deposition, etc.).

(2) **Opposition.** Opposition to a motion for summary judgment, if any, must be filed within ten (10) days after the motion is served. A separate, short, and concise “Statement of Genuine Issues”, setting forth the specific facts, which the opposing party asserts establishes a genuine issue of material fact precluding summary judgment in favor of the moving party must be filed by the party opposing the motion together with an opposition brief.

(3) **Facts Admitted.** All material facts in the moving party’s Statement of Uncontroverted Facts are deemed to be admitted unless controverted by a Statement of Genuine Issues filed by the opposing party.

(4) **Time for Filing.** Summary judgment motions must be filed by the date specified in the case scheduling order.

(5) **Stipulation.** Alternatively, the parties may file a stipulation setting forth a “Statement of Stipulated Facts” with a representation that no genuine issues of material fact exist. Such stipulation is solely for the purposes of considering the summary judgment motion and are not otherwise binding.

(b) **No Tolling.** Even though a summary judgment motion may be filed by the defending party, such motion does not toll the period of time for filing a F.R.B.P. 7012(b) motion or answer.

(c) **Consideration by the Court.** Nothing in this rule shall require the Court to review portions of the record in response to a motion where the moving papers do not make specific reference to portions of the record. To expedite a decision or for other good cause, the Court may, on notice to all parties, rule on a motion before the expiration of the 10-day period ordinarily permitted for filing opposition papers.

## PART VIII

### **RULE 8001. Appeals to District Court or Bankruptcy Appellate Panel.**

Reserved

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#### Committee Comment:

The Federal Rules of Bankruptcy Procedure in Part VIII set forth the rules concerning appeals for the U. S. Bankruptcy Court. No local bankruptcy rules need to be adopted for this part at this time.

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## PART IX

### **RULE 9001-1. Definitions.**

The terms “documents” and “papers” as used in these rules include those filed or transmitted by electronic means.

### **RULE 9003-1. *Ex Parte* Contact.**

No attorney, accountant, party in interest, or any of their employees shall engage in any *ex parte* meetings or communications with the Judge or with Chambers’ staff concerning any disputed issue of fact or law in a particular case, matter or proceeding. This rule does not limit or prohibit *ex*

*parte* presentation of emergency or administrative matters, or *ex parte* applications contemplated by the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, or these Rules.

**RULE 9006-1. Time.**

If the time period prescribed by rule, statute or order is less than eight (8) days, intermediate Saturdays, Sundays, and legal holidays shall be excluded. When a notice or other paper prescribes that some act occur and such notice or paper, other than process, is served by mail or electronic means, three (3) days shall be added to the prescribed time period. Three (3) days shall not be added to the applicable time period when such time period is given in open court.

**RULE 9007-1. Notice to Creditors and Others in Chapter 7 Asset Cases, and Chapter 12 and 13 Cases.**

Unless otherwise specified in the Federal Rules of Bankruptcy Procedure, after the time for filing claims has expired in Chapter 7, 12 and 13 cases, notice need only be served on the debtor(s), the case trustee, and their respective attorneys, the U. S. Trustee, creditors having timely filed proofs of claim, and entities specifically requesting copies of all notices.

**RULE 9009-1. Use of Local Bankruptcy Forms 4 and 4-A for Amendments.**

All amendments of voluntary petitions, lists, schedules and statements shall be in conformity with Mont. LBF 4, and a proposed order shall be submitted in conformity with Mont. LBF 4-A.

**RULE 9009-2. Voting on Chapter 11 Plans of Reorganization.**

Unless requested by the debtor and otherwise ordered by the Court, ballots must comply with Official Form 14. Original ballots shall be filed with the Clerk, and copies of ballots must be served on debtor's counsel and the U. S. Trustee, unless the Court orders that the original ballots are to be submitted to some other entity for tabulation.

**RULE 9009-3. Pre-Confirmation Hearings in Chapter 12 Cases.**

A pre-confirmation hearing shall be held in each Chapter 12 case in accordance with the procedure set forth in the "Chapter 12 Pre-Confirmation Hearing Order" set forth in Mont. LBF 18.

**RULE 9009-4. Form of Chapter 12 and 13 Plans.**

(a) **Chapter 12 Plans.** A Chapter 12 plan shall be filed within ninety (90) days of the petition date on Mont. LBF 14, and must include the projected income and expenses for the term of the plan, and a liquidation analysis.

(b) **Chapter 13 Plan.** Debtor's Chapter 13 plan shall conform to Mont. LBF 19 unless, for good cause, the debtor obtains leave from the trustee or the Court to submit an alternative form of plan. Requests for such leave from the Court shall be made by filing Mont. LBF 20, accompanied by a proposed Order. (See Mont. LBF 20-A.)

**RULE 9011-1. Signing of Papers; Representations to the Court.**

(a) **Signing of Papers.** All pleadings, motions and other papers that are submitted for filing shall be signed by an attorney of record in the attorney's own name, or if there is no attorney, by the party, except that the petition, schedules, statements and plan, if any, shall be signed by the debtor(s).

(b) **Electronic Signatures.** Any person signing a document to be electronically filed shall use “ /s/ [person's name]” when filing documents electronically. This shall constitute the signature of the person for purposes of F.R.B.P. 9011. The original declaration under penalty of perjury relating to the petition, statements, schedules, and any amendment to any of these types of documents, shall be transmitted by personal delivery, mail, or electronic means to the Clerk and, if necessary, shall be scanned into the CM/ECF system. The signature appearing on the electronic document shall be the original. The Clerk shall not retain any originally signed documents, but shall return them to the submitting person, provided such person has presented to the Clerk a stamped, self-addressed envelope. If no envelope is presented the document will be destroyed. Any password required for electronic filing shall be used only by the person to whom the password is assigned, and by authorized members and employees of an entity to whom the password is assigned.

**RULE 9011-2. Reminders to Court.**

In the event a Judge has under advisement any matter, including, but not limited to, a motion or decision in a bench trial, for a period of more than sixty (60) days, each party affected by the undecided matter shall send to the Judge a letter particularly describing the matter under advisement and stating the date the matter was taken under advisement. As long as the matter remains under advisement, at intervals of forty-five (45) days thereafter, each affected party shall send a similar letter to the Judge.

**RULE 9013-1. Motion Practice.**

(a) **Form.** All motions, including objections to discovery, shall be in writing, except those

made during trial or hearing.

(b) **Content of Motion.** Motions shall state with particularity the relevant law by section and the relevant procedure by rule upon which the moving party relies, shall specify all relief requested, and shall include a brief statement explaining why the relief should be granted. If a motion consists of several documents, the moving party shall serve to any party germane excerpts of all documents and all exhibits.

(c) **Service of Motion and Response.**

(1) **Minimum Service.** At a minimum, unless otherwise noted herein or modified by the implementation of CM/ECF, parties shall serve copies of their respective papers upon all opposing attorneys, the U.S. Trustee, the case trustee, if any, and any party appearing *pro se*. The serving party shall file a Certificate of Service with the Clerk.

(2) **Certificate of Service or Transmittal.** Unless otherwise noted herein or modified by the implementation of CM/ECF, an original certificate of service or transmittal shall be incorporated in, or attached to, each original pleading whenever service or transmittal of a document is required, and shall be filed with the Clerk. The copies served on other entities shall also reflect such proof of service or transmittal. All proofs of service or transmittal, except those made by the Clerk, shall be made by verified statement (i.e., "under penalty of perjury") identifying the document and stating the date on which it was served or transmitted, the method by which service was accomplished and shall include the name and address of each entity served.

(3) **Service by Electronic Means.** For purposes of service of motions, documents, pleadings and other papers, FED. R. CIV. P. 5(b), as amended, shall apply. Service by electronic means is allowed provided the entity being served consents in writing to such electronic service. An entity or the Court may make service under this Local Rule through electronic means by using the Court's transmission facilities, wherein the notice of electronic filing generated by CM/ECF (which contains a hyperlink to the filed document) shall constitute service of the motion, document, pleading or other paper.

(d) **Notice of Opportunity to Respond.** In bold and conspicuous print, the moving party shall include in each motion the following language:

**If you object to the motion, you must file a written responsive pleading and request a hearing within ten (10) days of the date of the motion. The responding party shall schedule the hearing on the motion at least 20 days after the date of the response and request for hearing and shall include in the caption of the responsive pleading the date, time and location of the hearing by inserting in the caption the following:**

## NOTICE OF HEARING

**Date:** \_\_\_\_\_

**Time:** \_\_\_\_\_

**Location:** \_\_\_\_\_

**If no objections are timely filed, the Court may grant the relief requested as a failure to respond by any entity shall be deemed an admission that the relief requested should be granted.**

(e) **Response to Motion.** Unless otherwise provided by these Local Rules, any entity objecting to a motion shall file a response and request a hearing within ten (10) days of the date of the motion and shall, in the response, notice the contested matter for hearing. The notice of the hearing shall provide that the hearing on the contested matter shall be scheduled at least 20 days after the date of the response and request for hearing. If no response and request for hearing is filed within ten (10) days of the date of the motion, the Court may grant the relief requested as a failure to respond by any entity shall be deemed an admission that the relief requested should be granted. Any response must state with specificity the grounds for any and all objections, including citation to applicable statutes and case law, provisions of the executory contract or unexpired lease in question, and the facts regarding whether any default exists under the executory contract or unexpired lease.

(f) **Exception for Specific Matters.**

(1) **Matters Governed by Other Rules.** The following matters: (A) Motions to Modify Stay, Mont. LBR 4001-1; (B) Objections to Proofs of Claim, Mont. LBR 3007-2; (C) Objections to Exemptions, Mont. LBR 4003-3; (D) Motions to Avoid Liens and Nonpossessory, Nonpurchase-money Security Interests, Mont. LBR 4003-4; (E) Motions for Assumption or Rejection of Executory Contracts and Unexpired Leases, Mont. LBR 6006-1; (F) Motions to Dismiss or Convert, Mont. LBR 1017-1; and (G) Objections to Late Filed Claims, Mont. LBR 3002-1, are governed by the identified Rules and follow a similar procedure as set forth in Mont. LBR 9013-1.

(2) **Matters that the Court will routinely grant or deny with Right to Request Hearing.** The following matters will be routinely granted or denied, without notice or hearing, in the Court's discretion, with any party in interest having the right to object, request a hearing and schedule a hearing to reconsider the issuance of any Order within ten (10) days of the date of the Order: (A) Employment of Professionals; (B) Change of Venue; (C) Compelling Turnover of Property by the Trustee; (D) Dismissal for Failure to Pay Filing Fee; (E) Extending time to File Dischargeability Complaint; (F) Extending Time to Pay Filing Fee; (G) Extending Time to Object to Discharge; (H) Redemption of Property; (I) Substitution of an Attorney; (J) Amending Schedules, or Statement of Financial Affairs; (K) Motion to Appear *pro hac vice*; (L) Reaffirmation Agreements (when signed by debtor and attorney); (M) Continuance/Rescheduling of Hearing; (N) Debtor's Motion to Convert from Chapter

11, 12, or 13 to Chapter 7; (O) Debtor's Motion to Dismiss from Chapter 11, 12, or 13; (P) Deposit Funds into Court Registry; (Q) Entry of Default; (R) Expediting Hearing; (S) Extending Time to File Proofs of Claim; (T) Participation in ASCS Program; (U) Pay Filing Fees in Installments; (V) Recusal of Judge; (W) Reopening Chapter 7, 11, 12, or 13 Case; (X) Rescission of Reaffirmation Agreement; (Y) Establish Last Date to File Proofs of Claim; (Z) Conduct Appraisal by Creditor of Debtor's Property; (AA) Withdrawal of Trustee's No Distribution Report; (BB) Examination of Debtor/Entity; (CC) Establish Bar Date; (DD) Leave to Appeal; and (EE) Stay Pending Appeal.

(g) **Order.** A separate original, proposed order shall be submitted with the motion.

(h) **Attendance at Hearings.** Any party proposing or opposing a motion or application who does not intend to actively pursue or oppose the same shall immediately notify all attorneys of record, *pro se* parties, and the Clerk, so that the Court, all attorneys, and any *pro se* parties are not required to devote unnecessary attention to the matter or to appear in court. Unless excused by the Court, the failure of any party to attend a duly noticed hearing shall be deemed a waiver of the pleading, objection, or motion, and a consent to sustaining or granting the relief sought by the attending party.

(i) **Motions to Vacate or Amend an Order.** A motion under F.R.B.P. 9023 or 9024 (or under FED. R. CIV. P. 59 or 60) must be filed within ten (10) days from the date of the order. Motions captioned as Motions to Reconsider shall be treated as Motions for Relief from a Judgment or Order and should set forth the grounds alleged to satisfy the criteria set forth in F.R.B.P. 9023 or 9024 (or FED. R. CIV. P. 59 or 60).

## **RULE 9013-2. Briefs & Memoranda of Law.**

(a) **Memoranda of Law.** Motions shall be supported by a memorandum of law filed with or as a part of the motion, except as provided in subsection (b) below. Memoranda shall be succinct and shall not exceed 15 pages in length without prior leave of the Court and shall include a concise statement of each basis for the pleading with relevant citations. Memoranda opposing the motion shall be filed within ten (10) days after service of the motion or as otherwise directed by the Court and shall not exceed ten (10) pages in length, without prior leave of the Court. Parties who cite authority not generally available on WESTLAW shall provide a copy to the Court. [*See also* Mont. LBR 7056-2 for special requirements applicable when the memorandum of law is being filed in support of a motion for summary judgment.]

(b) **Motions Not Requiring Memoranda of Law.** Unless otherwise directed by the Court, memoranda of law are not required for the following motions:

(1) to obtain an extension of time, provided that the request is made before the expiration of the period originally prescribed by applicable rule, statute, order, or as

extended by previous order;

(2) to continue a pretrial conference, hearing, motion, or the trial of an action;

(3) to demand a more definite statement;

(4) to waive the debtor's appearance at the 11 U.S.C. § 341 meeting;

(5) to amend the petition or schedules or statements; or

(6) to effect a substitution of parties.

#### **RULE 9013-5. Claim of Unconstitutionality.**

In any case in which the constitutionality of (a) an Act of Congress is brought into question and in which the United States or any agency, officer, or employee thereof is not a party, or (b) a statute of a state is brought into question and in which the state or any agency, officer or employee thereof is not a party, the party raising the constitutional issue shall file a motion that the case be certified in accordance with 28 U.S.C. § 2403 or Rule 24(c) of the Montana Rules of Civil Procedure, or the applicable rule or statute of any other state. The motion shall give the title of the cause, a reference to the questioned statute sufficient for its identification, and the respects in which it is claimed to be unconstitutional. The motion shall be accompanied by two (2) copies of a proposed form of certification for execution and transmission by the Court to the United States Attorney General or the State Attorney General, as appropriate.

#### **RULE 9014-1. Contested Matters.**

Upon the request of any party, the Court, in its discretion, will determine whether the provisions of F.R.B.P. 7016, 7026, 9019 and any other rules should apply to any contested matter, given the facts and the issues alleged in such matter.

#### **RULE 9015-1. Jury Trials.**

(a) **Applicability of Certain Federal Rules of Civil Procedure.** FED. R. CIV. P. 38, 39, 47-51, and 81(c), insofar as they apply to jury trials, apply in all cases and proceedings in this Court, except that a demand made under FED. R. CIV. P. 38(b) shall be filed in accordance with F.R.B.P. 5005.

(b) **Consent to Have Jury Trial Conducted by Bankruptcy Court.** If the right to jury trial applies and a timely demand has been filed under FED. R. CIV. P. 38(b), the parties may consent to have a jury trial conducted by the Bankruptcy Court under 28 U.S.C. § 157(e). Parties must jointly or separately file a statement of consent no later than thirty (30) days after

the date for demand. Failure to affirmatively file a consent to a jury trial shall be deemed to be a lack of consent.

(c) ***Voir Dire.*** Unless otherwise ordered, interrogation of prospective jurors on *voir dire* examination shall be conducted by the Court. The Court, in its discretion, may permit questions to be submitted in writing in advance of jury selection or orally at the side of the bar during *voir dire*.

(d) **Time for Filing a Demand for Jury Trial After Removal.** If at the time of removal all necessary pleadings have been served, a party entitled to a jury trial must demand one within 20 days after the Notice of Removal is filed; otherwise, within 20 days after service of the notice of filing of the Notice of Removal on the party entitled to a jury trial. A party making an express demand for trial by jury prior to removal, in accordance with federal or state law, need not make a demand after removal. If applicable state law in the court from which the case is removed does not require the parties to make express demands to claim trial by jury, the parties must make demands after removal, in accordance with this paragraph, unless the Court directs them to do so within a specific time. The Court may make such a direction on its own motion and shall do so as a matter of course at the request of any party. The failure of a party to make a jury demand as directed under this sub-paragraph constitutes a waiver of trial by jury.

#### **RULE 9019-1. Alternative Dispute Resolution and Settlement Conferences.**

(a) **Generally.** The Court encourages the use of Alternative Dispute Resolution (“ADR”) in any adversary proceeding or contested matter. where the parties believe the contested issues may be resolved through ADR. The Court will discuss ADR with the parties during the case scheduling conference. *See* Mont. LBR 9014-1 for applying ADR to contested matters.

(b) **The Early Neutral Evaluation Process and Goals.** The provisions of the District Court Local Rules regarding Early Neutral Evaluation (“ENE”) shall apply in Bankruptcy Court, subject to modifications necessary to ensure a specialized panel and requirements appropriate to bankruptcy issues. Upon request and consent of all parties, an adversary proceeding or contested matter will be submitted to ENE and the deadline for completing the ENE process shall be set forth in the Case Scheduling Order. The Court, upon request, will coordinate the initiation of ENE in any adversary proceeding or contested matter.

#### **RULE 9022. Notice of Judgment or Order.**

Pursuant to FED. R. CIV. P. 5(b), as amended, the Court may serve notice of entry of a judgment or order through several methods, including electronic means, upon an entity’s consent, by using the Court’s transmission facilities, wherein the notice of electronic filing generated by CM/ECF

(which contains a hyperlink to the filed document) shall constitute service of the order or judgment.

**RULE 9029-1. Local Rules.**

**(a) Matters Not Covered by Rules.**

(1) **Consistent Practice.** In any matter not covered by these Rules the Court may regulate practice in any manner not inconsistent with the Federal Rules of Bankruptcy Procedure and the Federal Rules of Civil Procedure.

(2) **Suspension of Rules.** The Court, upon its own motion or the motion of any party, may change or dispense with any of these rules in the interests of justice.

(3) **Good Cause.** A motion for waiver of these rules may be approved if the moving party demonstrates good cause for a waiver.

**RULE 9036-1. Notice by Electronic Transmission.**

(a) **Electronic Noticing Agreement.** Pursuant to F.R.B.P. 9036, the Court may direct notice by electronic transmission if the entity entitled to receive the bankruptcy notice requests in writing that notices be transmitted electronically. This written request requirement is fulfilled through the execution of an electronic noticing agreement. This is in addition to and distinct from the consent document executed for the CM/ECF electronic service.

(b) **BNC.** The Clerk will provide noticing agreements through the judiciary's Bankruptcy Noticing Center to any person requesting this service. The terms and procedures for electronic noticing are detailed in the Court's noticing agreement provided by the Clerk and also available on the Court's website at <http://www.mtb.uscourts.gov> .

**EFFECTIVE DATE**

These Local Rules shall be in force and effect in the U. S. Bankruptcy Court for the District of Montana from and after December 1, 2001, and shall supersede all former Local Rules and General Orders of the Court.

/s/Ralph B. Kirscher  
CHIEF BANKRUPTCY JUDGE RALPH B. KIRSCHER

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